

DOCUMENT RESUME

ED 433 587

EA 029 988

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TITLE School Finance Litigation across the States: What Are a State's Core Finance Data Needs?
SPONS AGENCY National Center for Education Statistics (ED), Washington, DC.
PUB DATE 1998-01-00
NOTE 63p.; Paper presented at the Annual Meeting of the American Education Finance Association (Seattle, WA, March 17-21, 1999).
PUB TYPE Reports - Evaluative (142) -- Speeches/Meeting Papers (150)
EDRS PRICE MF01/PC03 Plus Postage.
DESCRIPTORS *Court Litigation; Educational Equity (Finance); *Educational Finance; Elementary Secondary Education; *Finance Reform; Financial Policy; School District Spending

ABSTRACT

This report identifies the finance data needs of states facing school finance litigation or seeking to avoid it altogether. The article addresses the following key questions: What issues are prominent in the "new wave" of school finance litigation? and What are the core finance data needs of states seeking to address these issues? The materials analyzed for this report consist of state supreme court decisions on the constitutionality of school-finance systems, beginning in 1989. This set of decisions has been referred to as the "new wave" of judicial decisions related to state school finance litigation. The paper lists the limitations of the study, along with definitions, and provides the background and history of early school finance litigation. Specific statutory issues, the level of funding, and funding disparities are all discussed. The report concludes that states need to scrutinize elements of their finance system for elementary and secondary education, describe them, and develop fiscal data on each element of the system. (Contains 3 tables on finance litigation, 11 references, and an appendix listing court challenges where plaintiffs have prevailed. (RJM)

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School Finance Litigation Across The States: What Are A State's Core Finance Data Needs?

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(January 1998)

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Prepared for the U.S. Department of Education, National
Center for Educational Statistics, Core Finance Data Task
Force, Washington, D.C.

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Introduction

School finance litigation is a top issue across the states. Just since 1989, supreme courts in 21 states have ruled on the constitutionality of their school finance system. Currently litigation is active in a majority of states and concern over the threat of a possible court challenge effects most of the remaining states.

The new wave of school finance litigation has propelled school finance reform to the top of state policy agendas--creating a positive climate for change. It is forcing states to reexamine all the issues concerning educational equity that they have previously dealt with, but there are important new directions as well.

Supreme court rulings in Kentucky, Texas, New Jersey, Montana, Vermont, Massachusetts, Wyoming and other states have set out in bold new directions while providing a significant departure from the past. In all of these cases the courts have found that state school finance systems have failed to provide the constitutionally mandated levels of education quality for all students and at all schools. Like the early Rodriguez and Serrano school finance court decisions of the 1970s and their progeny, as a group, these decisions mark a new wave of school finance litigation and have substantially impacted education beyond their borders, propelling a rash of court challenges in their wake.

Purpose and Objectives

The purpose of this report is to identify the core finance data needs of states facing school finance litigation or seeking to avoid it altogether. Core finance data needs of states, while not exhaustive of factors considered by high courts, will also aid states seeking to evaluate their finance system, revise it, or develop core resource indicators to monitor it over time.

The report addresses the following key questions.

- o What issues are prominent in the "new wave" school finance litigation?
- o What are the core finance data needs of states seeking to address these issues?

The body of work that is analyzed for this report consists of high court decisions on the constitutionality of school finance systems, emerging from state supreme courts beginning in 1989. This set of decisions has been referred to as the "new wave" or "third wave" of judicial decisions related to state school finance litigation.

Methodology and Definitions

The method utilized to determine state core-finance data needs included the review of the relevant literature and state supreme court opinions emerging during the new wave of school finance litigation that commenced in 1989.

A content analysis of state supreme court decisions was undertaken aimed at identifying key finance indicators cited in the rulings. The first phase of analysis consisted of a review of the relevant literature and a review and analysis of the twenty-one supreme court opinions that comprised the dataset. In addition, written descriptions of each ruling as related to school finance data issues were completed. State-by-state summaries are provided in Appendix A.

In a second phase of analysis, crosscutting issues related to the new wave of school finance litigation were highlighted, based on the review of court opinions and the relevant research literature. In addition, finance data elements were delineated by state and a tabular listing of illustrative finance indicators was developed.

In the third phase of analysis, based on the foregoing, core finance data cited in state supreme court rulings were identified and a parsimonious set of core finance data indicators was delineated and defined.

Limitations. Because of the complexity involved in school finance litigation and the differences that are inherent in the 50-state education system, the attempt to define core finance data needs of states is necessarily fraught with threats to reliability and validity. The core finance data indicators presented, therefore, are representative and reflective of finance data brought to bear on state high court rulings on the constitutionality of state education finance systems. They are neither exhaustive or all-inclusive. They will need to be complemented by data specific to particular states. Thus, the overarching objective of this report was to develop a basic set of finance indicators that were limited, parsimonious and broad.

In addition, an important need for states seeking to develop core finance indicators is the timeliness of the dataset. The set of indicators suggested herein, to be useful, must be based on timely, up-to-date information. Also needed is the availability of multiple data elements within a single data record. Finally, similar definitions for core data elements are necessary to assure interstate comparability.

Finally, data utilized in school finance litigation and cited in supreme court rulings include many indicators. Finance data include not just dollars, tax rates and real estate values, but

what funding buys in schools and in classrooms, including pupil-teacher ratios, curriculum, teacher experience and salaries, facilities, and student outcomes. These are identified in the state-by-state descriptions and tabular presentations and are included in the discussion and final listing of core finance data elements. However, the paramount focus of the report is on equity related to dollar disparities.

Definitions. Terms used throughout the report are as follows.

Waves of School Finance Litigation. According to some scholars, school finance litigation can be grouped into three "waves" of activity, although certain caveats and overlaps are present.¹ In the first wave of school finance litigation (1960-1972), plaintiffs alleged finance disparities among school districts within a state violated the equal protection clause of the U.S. Constitution. Court decisions from 1972-1988, the second wave of activity, were based on equal protection clauses in state constitutions, education articles or both. In the "new wave" of school finance litigation, beginning in 1989, plaintiffs have generally alleged violations of the state constitution based on plain meaning of the education article and issues of adequacy have accompanied traditional equity arguments.²

Core Data Elements. Core finance data consist of fundamental data elements that are essential to the operation, management and improvement of school finance systems, including the development of educational policy, at all levels. These elements are limited, parsimonious, broad and basic, and must necessarily be supplemented by states to include unique elements based on their specific context and on considerations deemed essential by high courts as they seek to determine the constitutionality of the state school finance system over time.

Organization

This report is divided into three sections. First, a brief review of litigation to 1989 is provided. Second, issues emerging from the "new wave" of court cases on school finance are identified and reviewed. Third, the foregoing analysis is used to provide a parsimonious set of the core finance data needs of states facing litigation, seeking to avoid it altogether or to modify their finance structure in an effort to make it more equitable and adequate. Finally, a summary discussion and a listing of core finance data needs of states is provided. Appendix A includes illustrative financial evidence cited in state high court opinions by state for each of the twenty-one states high court opinions that have been rendered since 1989.

I. Background and History: Early School Finance Litigation (1960-1988)

Over two decades ago, the landmark U.S. Supreme court case on school finance equity, San Antonio v. Rodriguez (1973) found that variations in spending among Texas school districts due to local wealth were not unconstitutional.³ The Court focused on whether education was a fundamental right under the U. S. Constitution and if there was a factual basis to conclude the Texas finance system discriminated against the "poor." Answering no to these questions, the disparity in funding was upheld as being a result of the state's interest in preserving the local control of education. This decision effectively halted school aid challenges in federal courts, but did not preclude further federal litigation at some later date.⁴

Following the Rodriguez decision reformers turned to state courts and focused on state constitutional provisions to invalidate state finance schemes that resulted in wide inequalities in funding among school districts within a state. Serrano v. Priest, decided before Rodriguez (1971, California) and Robinson v. Cahill (1973, New Jersey) beckoned the onset of the second wave of school finance litigation, spanning the 1970s and early 1980s. In both cases the school finance plan was invalidated based on the state constitution, signaling school finance litigation was viable in state courts. This led to over a decade of state school finance litigation focused on the equity of a state's school finance system.

By 1983, when the "education reform movement" of the 1980s eclipsed the school finance reform movement of the 1970s, seventeen state high court decisions had been rendered: seven overturned existing school finance plans and ten upheld state finance systems.⁵ However, propelled by the new judicial activism most states modified their school finance plan over the 1970s in an effort to make it more equitable and states raised additional funding for the schools to counteract the disequalizing effects of local funds raised from property taxes.

II. Issues in the New Wave of School Finance Litigation

In 1989-90, after a decade of relative quiet, the courts once again burst on the scene, with lead supreme court rulings in five states and victories for plaintiffs representing poor children and school districts in four--Kentucky, Texas, Montana, and New Jersey.⁶

These lead court rulings move into new territory by: (1) redefining the constitutionally required level of education a state must provide--this creates a positive climate for change and improvement in education aimed at quality education, (2) using new

criteria for measuring constitutional compliance--this means that not only dollars but what dollars buy in terms of programs, services and outcomes have prominence in the school finance debate, (3) focusing on adequacy in addition to equity while calling for major systemic reform--this means that both the level of funding and its distribution are at issue, and (4) importantly, relying on the plain meaning of education clauses of state constitutions--this opens the door to broad school finance reform across the country because a decision that turns on the education clause does not have the broad reach of fundamentality and suspect class rulings that could potentially call into question all state services and programs.

The lead state court rulings set the stage for the rising tide of litigation that would follow in their wake and continue to energize the school finance reform movement into the present. As shown in Table 1, just since the onset of the "new wave" of school finance litigation in 1989, 21 of the state's supreme courts have ruled on the constitutionality of their state education finance system. In eleven states, the system has been found unconstitutional.⁷ In ten states the system was upheld.⁸ Although they present a great variety of detail, in large part these state court rulings turn on whether a finance system is adequate and provides sufficient revenue for all students to obtain a certain level or standard of education that is considered constitutionally required.⁹

Antiquated Definition of Adequacy--Defendant Victories

In states where the school finance system has been upheld, courts appear to be invoking an age-old minimalist standard of educational adequacy set in Rodriguez nearly a quarter of a century ago: that because all students had access to a minimum, basic education, the finance system was not constitutionally infirm despite disparities in educational quality and equality. That significant changes have occurred in society and the economy over the past quarter century appears unacknowledged. However, even these courts have taken the opportunity to point out that (1) petitioners either have failed to mount a challenge to the adequacy of the finance system, or (2) petitioners, themselves, conceded that the education system was adequate--apparently using a minimalist, basic skills definition of adequacy.

For example, in Virginia the supreme court found that education was a fundamental right but upheld the inequitable finance plan without a trial, stating, in part, "... the Constitution guarantees only that the [state minimum] Standards of Quality be met" and the "students do not contend that the manner of funding prevents their schools from meeting" these standards. Likewise, Wisconsin's high court, upholding the finance plan, stated, "Our deference would abruptly cease should the legislature determine that it was 'impracticable' to provide to each student a

Table 1. The New Wave of School Finance Litigation (Activity since 1989)

States in Which the School Finance System Has Been Ruled Unconstitutional by the State's Highest Court:

- Arizona*--Roosevelt Elem. School Dist. v. Bishop, 877 P.2d 806 (1994).
 Kentucky--Rose v. Council for Better Education, 790 S.W.2d 186 (1989).
 Massachusetts--McDuffy v. Sec'y of the Exec. of Education, 615 N.E.2d 516(1993).
 Montana--Helena Elementary School District No.1 v. State, 769 P.2d 684 (1989); *modified in Helena Elementary School D. 1 v. State*, 784 P.2d 412 (1990) (delaying effective date of decision).
 New Hampshire--Claremont School District et al. v. Governor et al., No. 97-001 (slip copy-- December 17, 1997).
 New Jersey--Abbott v. Burke, 495 A.2d 376 (1985); Abbott v. Burke, 575 A.2d 359 (1990); Abbott v. Burke, 643 A.2d 575 (1994); Abbott v. Burke, 693 A.2d 417 (1997).
 Ohio--DeRolph v. State, 677 N.E.2d 733 (1997).
 Tennessee--Tennessee Small School Systems v. McWherter, 851 S.W. 2d 139 (1993).
 Texas--Edgewood Indep. School Dist. v. Kirby, 777 S.W.2d 391 (1989); Edgewood Indep. School Dist. v. Kirby, 804 S.W.2d 491 (1991); Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist., 826 S.W.2d 489; Edgewood Indep. School Dist. v. Meno, 893 S.W.2d 450 (1995).
 Vermont--Brigham v. State, 692 A.2d 384 (1997).
 Wyoming--Campbell Co. School Dist. v. State, 907 P.2d 1238 (1995).

**(Note: Arizona had the capital outlay provisions of the finance system found unconstitutional; Alabama's high court stayed the lower court remedy decision; the Missouri high court let stand a lower court decision finding the time was not ripe for a supreme court ruling.)*

States in Which the School Finance System Has Been Challenged and Upheld by the State's Highest Court:

- Alaska--Matanuska-Susitna Borough Sch. Dist. v. State, 931 P.2d 391 (1997).
 Illinois--Committee for Educational Rights v. Edgar, 672 N.E.2d 1178 (1996).
 Kansas--Unified School District 229 et al. v. State, 885 P.2d 1170 (1994).
 Maine--School Admin. Dist. No. 1 et al. v. Commissioner, 659 A.2d 854 (1994).
 Minnesota--Skeen v. State, 505 N.W.2d 299 (1993).
 North Dakota*--Bismark Public School #1 v. State, 511 N.W.2d 247 (1994).
 Oregon--Coalition For Equitable School Funding v. State, 811 P.2d 116 (1991).
 Rhode Island--Pawtucket v. Sundland, 662 A.2d 20 (1995).
 Virginia--Scott v. Commonwealth, 443 S.E.2d 138 (1994).
 Wisconsin--Kukor v. Grover, 436 N.W.2d 568 (1989).

**(Note: Majority (3) ruled in favor of the plaintiffs but North Dakota requires 4 justices to declare a statutory law unconstitutional).*

Source: D. Verstegen, University of Virginia (1/8/98). Compiled from document analysis, participant observation and interviews including the Education Commission of the States, National Conference of State Legislatures, and Center for the Study of Education Finance.

right to attend a public school at which a basic education could be obtained, or if funds were discriminatorily disbursed and there was no rational basis for such a finance system." In a split Minnesota decision the court said: "this case never involved a challenge to the adequacy of education in Minnesota" and that even the plaintiffs conceded that the system was adequate--apparently using a minimalist standard.

Likewise in Maine, the supreme court upheld the state finance system noting that plaintiffs "presented no evidence at trial that any disparities in funding resulted in their students receiving an inadequate education." The Rhode Island supreme court, in upholding the state aid system, noted that all children received instruction in the minimum "basic-education program, and that these subjects are taught in all schools irrespective of district wealth." In another case, the Alaska supreme court upheld the state's practice of giving a larger share of state money to regional school districts than to municipal and borough systems. However the adequacy of the state's finance system was not challenged. In Illinois, although the state constitution's education article called for a "high quality" public education, the high court ruled the provision was nonjusticiable.

Quality Education as Adequate--Plaintiff Victories

Where state finance systems have been invalidated by high courts, adequacy is defined in the context of the information age and global economy. In this context, a minimum or basic education is found to be insufficient and therefore unconstitutional. As the New Jersey court said: "what was adequate in the past is inadequate today." According to the high court in Wyoming: "The definition of a proper education is not static and necessarily will change" with the times. Likewise, the Vermont high court opined: "Yesterday's bare essentials are no longer sufficient to prepare a student to live in today's global marketplace." The Massachusetts's Court held: "Our Constitution, and its education clause, must be interpreted in accordance with the demands of modern society or it will be in constant danger of becoming atrophied. . . ." In New Hampshire the court declared: "A constitutionally adequate public education is not a static concept removed from the demands of an evolving world."

Using a contemporary standard, the New Jersey court held that an adequate education would equip all children to be "citizens and competitors" in the labor market (emphasis added). It would require equal opportunities to learn including "course offerings resulting in such intangibles as good citizenship, cultural appreciation, and community awareness."¹⁰ To reach this standard, the court called for funding equity approximating 100% between poor and wealthy school districts with imbalances favoring the needy.

Likewise, in Kentucky, the Supreme court accepted the trial court's statement that an efficient system of education must be uniform, adequate and unitary. An adequate education was defined by the Court as providing each child with facility in certain essential competencies.¹¹ An adequate education system, according to the lower courts in Ohio and Alabama, and the high court in Massachusetts and New Hampshire, sought to ensure each student the "essential competencies" cited in Kentucky, including a "sufficient level of academic or vocational skills to enable him or her to compete favorably with counterparts in surrounding states." To this the Alabama court added: ". . . and across the nation, and throughout the world, in academics or the job market."

The mandate emerging from the Massachusetts court, which found the finance system inequitable, inadequate and unconstitutional, was to provide opportunities that were available to children in the most affluent school systems to children in all school systems--rich or poor alike. The Montana court concurred by finding that more than a basic education was constitutionally required and that accreditation standards were only a foundation upon which a quality education might be built, a holding of the Texas court as well.

As the New Hampshire court explained: "[m]ere competence in the basics--reading, writing, and arithmetic--is insufficient in the waning days of the twentieth century to insure that this State's public school students are fully integrated into the world around them. A broad exposure to the social, economic, scientific, technological, and political realities of today's society is essential for our students to compete, contribute, and flourish in the twenty-first century." According to the court:

. . . in order to deliver a constitutionally adequate public education to all children, comparable funding must be assured in order that every school district will have the funds necessary to provide such education. Imposing dissimilar and unreasonable tax burdens on the school districts creates serious impediments to the State's constitutional charge to provide an adequate education for its public school students.

The Wyoming court--in defining the constitutional command for "a thorough and efficient system of public schools, adequate to the proper instruction of all youth of the state"--underscored that an "equality of quality" was necessary and achievable through an equitable financing scheme. The court instructed the legislature to define the "best" educational system and identify the proper "package" for each student, cost it out, and fund it. Lack of resources would not suffice as an excuse to fall short: "All other financial considerations must yield until education is funded" the court ruled.

In these cases and others like them, constructs of equity and adequacy cannot be severed. What was adequate was largely

determined by the education resources and learner outcomes evident in the best or highest spending school systems. What was adequate was determined in light of the times. Today, the high courts have found, an adequate education is defined by the "best" system; it is a "quality" system; it provides "excellence in education"; it equips all children with certain competencies that allow them to be a citizen and compete in the "global marketplace." Thus, funding systems that supported basic, minimum skills were found inadequate and therefore unconstitutional.

Moreover, a quality education, in contrast to schooling for minimum, basic skills, would provide broad public benefits. As the New Jersey court explained:

While the constitutional measure of the educational deficiency is its impact on the lives of these students, we are also aware of its potential impact on the entire state and its economy--not only in its social and cultural fabric. . . . So it is not just that their future depends on the State, the state's future depends on them.

The New Hampshire court concurred by saying: "Education provides the key to individual opportunities for social and economic advancement and forms the foundation for our democratic institutions and our place in the global economy."

III. Core Finance Data Needs of States

Common fiscal elements cited in high court rulings across the states, although presenting a great variety of detail, include information on the state funding system, its impact on children in classrooms and schools, and demographic data. In addition, the evidence presented in the "new wave" of school finance litigation in some states, focuses directly on inadequacies in the level of educational opportunities offered to schoolchildren in one or more school district within the state. Core data elements related to these issues include not just dollars, but what dollars buy, in terms of the depth and breadth of curriculum, facilities, teacher-pupil ratios, computers and other equipment, labs, test scores, and budget flexibility.

Table 2 provides a comparison of state finance data cited in high court opinions from 1989-1998 by state for each of the twenty-one states where opinions have been rendered. As is shown, information on state statute, its impact, and demographics have been cited by most state high courts. Per pupil funding from state and local sources, tax rates from real estate taxes, and equalized valuation, by school district, are also prominently featured in high court decisions. Important demographic factors include the number of students and those with special needs, such as poverty, disability, limited English proficiency and other factors. The

Table 2. Illustrative Finance Indicators Cited in State High Court Opinions on the Constitutionality of the School Finance System (1989-1997)

	STATES WHERE PLAINTIFFS PREVAILED											STATES WHERE DEFENDANTS PREVAILED									
	AZ	KY	MA	MT	NH	NJ	OH	TN	TX	VT	WY	AK	IL	KS	ME	MN	ND	OR	RI	VA	WI
STATUTE - FINANCE																					
Finance Formula	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Equalization Aid	X							X						x			x		x	x	
Capital Outlay						X			X												
Pensions						x															
Transportation						x	x		x		x						x	x	x		
Local Leeway					x												x	x		x	x
Other						X		X	X			x	x	x	x	x	x		x		x
FUNDING - PER PUPIL																					
Total		x	x	x		x		x	x	x	x		x	x	x	x	x	x	x		x
Federal Aid				x	x	x		x									x			x	
State aid	X				x			X					x				x		x	x	
Local aid: Property				X	x			X		X			x			x	x		x		
Sales								X													
Other sources				X				X								x					
LOCAL ABILITY-TO-PAY																					
Taxable Property Value	x	x	x	x	x	x	x	x	x	x	x		x	x		x	x	x	x		x
Income		x												x							
Sales								x						x							
Other														x						x	
TAXES (Rate)																					
School Property	X	X			x	x		x	x	x		x	x	x	x	x	x	x			
Municipal (overburden)						X															x

	STATES WHERE PLAINTIFFS PREVAILED											STATES WHERE DEFENDANTS PREVAILED									
	AZ	KY	MA	MT	NH	NJ	OH	TN	TX	VT	WY	AK	IL	KS	ME	MN	ND	OR	RI	VA	WI
DEMOGRAPHICS																					
No. of pupils (public)	x	X	x	X		X	x	x	X	X						x			x		
Minority						X															
Poverty						x													x		x
Special Needs						X	X				X		x						x		x
Special Education							x				x						x		x		
Other						x					x		x			x	x		x		x
DISTRICT																					
Type (e.g., urban)						X	X	x			X	X		x			X	X			X
Elem/Secondary																x		x			
RELATED FACTORS																					
Pupil-teacher ratio		X	X				X		X								x			x	
Teacher salary		X								X			x							x	
Teacher Experience			X							X											
Curriculum	X	X	X	X		X	X	X	X	X			x				x		x	x	
Facilities/Labs	X	X		X		X	X	X			X		x				x				
Library	X		X	X				X	X								x			x	
Technology/Labs	X		X	X				X	X	X											
Test Scores		X		x		X											x		x		
Materials/Equipment	X	X		X			X	X									x			x	
Graduation/Dropout		X				X													x		
Extracurricular								X	X												
Other	X	X	X			x							x				x				x
COSTS																					
Cost Issues							x	x	x		x								x		

Source: D. Verstegen (1/98). University of Virginia, Curry School of Education.

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most commonly cited element under other "related factors" is a school district's curriculum. In addition, facilities and equipment (e.g., computers/technology) are often cited factors that are related to funding inadequacies in the current swell of school finance litigation across the states.

Core Finance Data Related to the Finance Formula, Its Impact and Demographics

Data that assess the impact of legislatively designed school finance formulae on children, taxpayers and school systems within the state and descriptions fiscal policy are of interest to high courts.

State statutory data needs include components of the school funding system linked to revenues and eligible populations--such as per pupil equalization aid, transportation allotments, minimum aid, hold harmless provisions, local leeway funds, and special supplemental provisions related to districts (urban/rural); and students (vocational, special, bilingual, at-risk). The specific components necessarily vary by state as statute and needs also vary.

For example, in New Jersey, the high court addressed statutory deficiencies in the funding structure related to fiscal inequity and achieving the state constitutional mandate. The court noted that funding was based not on present need but on the prior year's budget and did not address capital construction needs. Also reviewed were minimum aid provisions, pension aid, categorical assistance, transportation aid, and limitations (caps) placed on equalization aid and school budgets.

In Wisconsin, the court reviewed the statutory mechanism for funding education in detail, noting, as have most high courts, that schools were funded through a mix of federal, state and local funds. The state share of funds consisted of equalization aid and categorical aid. Equalization aid distributed the largest portion of aid (\$902 million of the total \$1.14 billion). It was distributed through a two-tiered guaranteed tax base system, which was discussed and graphically depicted in the final decision with accompanying footnotes defining each element. The court also discussed elements not considered in the funding system, such as assistance for schools with high concentrations of poverty, and recent legislation intended to address these needs.

Public education in Tennessee, according to the Court, was funded approximately 45% by state, 45% by local government, and 10% by the federal government. The largest source of state funds was the Tennessee Foundation Program (TFP); categorical aid made up the remainder. However, TFP funds provided less than \$60 million out of an expenditure of \$2.5 billion. Adjustments to TFP funds were made for certain additional categories, such as the training and

experience of teachers. In addition, testimony was cited that indicated that the level of funding was inadequate and unrelated to actual costs, to wit: The "TFP does not relate appropriations to actual costs of delivering programs and services."

In Vermont, although all parties agreed that the finance system--the Foundation Program--paid for the cost of a "minimum-quality" education, the basic weakness of the system, the court found upon review, was that it was "limited": it equalized local capacity only to a level of minimums. Court analysis of the state equalization statutes found that the object of the plan was not educational opportunity but the production of a minimal education program; it did not eliminate wealth disparities; it was unconstitutional.

In Minnesota, the court reviewed the basic state property tax system, other local funding mechanisms and state aid. The final ruling included a table detailing the total dollar amount and percentage of funding per pupil for general education revenue across all categories and by each specific category. Categories included: uniform basic revenue (equalization aid), cost differential revenue (enrollment decline/growth); compensatory/AFDC; teacher retirement; sparsity; training and experience; low fund balance, grandfather/supplemental revenue, and referendum/discretionary revenue.

Three statutory provisions were highlighted in the Wyoming decision. First was the "recapture" provision that permitted districts to keep 109 percent of the "foundation" amount if their locally raised revenues from the "optional mills levy" was above that amount. The additional nine percent of funds were defended as being the result of social costs incurred in areas where mineral extraction occurred, but the court noted that no study justified this differential.

Second were capital outlay provisions. They limited school system funds to ten percent of the assessed value of real property, but poor school systems could not raise enough for even a single school building because they had low assessed valuations. Data showed that facility renovation and repair totaled \$268.7 million with a new construction need of \$7.1 million for replacement, totaling \$275 million in needed capital facility expenditures. Analysis of the funding system showed further that the legislature routinely transferred capital funds designated for facilities to the foundation program to meet operational expenses.

Third, the Wyoming court reviewed the overall mechanism for funding schools, which was based on number of classrooms units (CRU) needed to operate a school and supported at \$92,331 per classroom unit. This, in addition to associated statutory provisions, such as the divisor system that benefitted small schools because they cost more; and economies of scale adjustments

that benefitted large districts, "were revealed as assumptions without basis in study or empirical data" and struck down as unconstitutional.

In North Dakota, the court traced the contours of the funding program. The state used a foundation program to distribute school aid with pupils weighted by grades in school and deductions were made for the local share of expenses based on the product of a fixed tax rate (22 mills) times the "latest available net assessed and equalized valuation of property of the school district." The state also distributed tuition apportionment funds to local school districts and provided for a series of categorical programs: transportation aid, special education, vocational education, school activity and lunch programs. Other sources of state aid included revenues in lieu of property taxes from coal conversion and severance taxes; an oil and gas gross production tax; an oil extraction tax and a tax on mutual and cooperative telephone companies. Analyses revealed that they were not included in the local ability-to-pay for education deduction, and contributed to fiscal disparities.

Ohio's schools were funded through a "foundation" program--this provided a guaranteed amount of money (a minimum) for each student from a combination of state and local funds. This amount of money was further adjusted by the "cost-of-doing business" that assumed higher costs in cities than in rural areas. The grand total was then split between the state and locality based on the total taxable value of real and tangible personal property in the district (times a certain percentage). Special factors were then taken into account, such as categorical programs for vocational and special education and transportation. However, it was found that no adjustment was made in special factor allotments for a school system's local ability-to-pay for education.

In Massachusetts, several interrelated statutory deficiencies were enumerated by the plaintiffs and reviewed by the court. First, under the existing "system" the principal source of funds for public schools were local funds drawn from the property tax. Towns and cities with low real estate valuations, were "severely limited" in their ability to raise local funds. Second, there was no statutory requirement for local contributions to the state aid program. Third, state aid was minimal and insufficient to compensate for variations in local revenues across the state. Fourth, state aid was unpredictable and in some years not granted until after the school year had begun. Fifth, state aid for schools was "undifferentiated" from state aid for other municipal purposes and there is no requirement it be used solely for schools.

In Kansas, the high court commented on the new finance legislation that was being challenged, "The School District Finance and Quality Performance Act." The massive bill contained 69 sections; the first 36 were related to financing. The court

detailed the provisions of the Act addressed in the litigation. For example, the finance system consisted of a Foundation Program, with foundation support distributed based on weighted pupils and recapture provisions included. The basic grant was set at \$3,600 and adjusted by weights. Once each of these weighting factors was determined for the district, those amounts were added to enrollment and multiplied by the \$3,600. Other provisions included limitations on local funding exceeding the district's state aid; and recapture of excess local funds provided by the supplemental levy from the required local millage. In addition, the finance system allowed a district to receive supplemental state aid if its assessed valuation per pupil was 75% or less of statewide assessed value per pupil (using a Guaranteed Tax Base methodology).

Weighted funds, challenged in the Kansas litigation (along with the level of basic aid), included transportation (formula based on cost and density), bilingual (0.2); vocational (0.5); at-risk (0.05 based on students qualifying for free and reduced priced lunches); new facility (0.25); and, low enrollment (various weights for districts with enrollments under 1,900). Of the weights, the low enrollment factor comprised the largest fiscal element, at 11% of the total general operating fund budgets. Amendments added in 1993 included a declining enrollment provision, additional taxing authority to off-set start up costs associated with new facilities, adjustment provisions should state aid be insufficient to pay full costs of the program, and modifications of the Quality Performance Accreditation system.

In Maine, in an unusual case, the high court upheld a specific statutory provision of the state finance system that implemented reductions in funding based on a percentage reduction method. Plaintiffs, representing mainly high wealth districts, alleged that the state's funding reductions implemented pursuant to the School Finance Act violated the equal protection clause of the state constitution.

Specific Statutory Issues: School Facilities and Special Education. In several states, courts have focused on specific statutory provisions in state finance systems--or the lack thereof. Of particular concern in recent court rulings are facility disparities across the state and funding for students with special needs that generate higher costs, such as children with disabilities and children in poverty or at-risk of dropping out of school.

In an unusual high court case in Arizona, the Court found the finance statutes relating to capital outlay provisions of the state finance system unconstitutional. Facility disparities, the court pointed out, resulted from heavy reliance on local property tax revenues which also varied enormously across the state. For instance, the assessed value of Ruth Fisher Elementary School District, with the highest valuation per pupil in the state, was

\$5.8 million. In San Carlos Unified District, the poorest, it was \$749. Moreover, a property-poor district with a high tax rate could generate less revenue than a property rich district with a low tax rate. Demographic factors--such as income and student population--also contributed to disparities.

In New Jersey, facilities in poor urban districts were often in disrepair, overcrowded, unsafe and threatened the safety of children. However, most schools in wealthy localities were newer, cleaner and safer. In East Orange, 13 schools needed asbestos removal or containment; 13 required structural system repairs; and 15 had heating, ventilation or air conditioning problems. Moreover, poor urban districts were crowded. In Paterson children ate lunch in a small areas in the boiler room of the basement; and remedial classes were taught in a former bathroom. A school in East Orange had no cafeteria and the children ate lunch in shifts in the first floor corridor; and a class was held in a converted coal bin.

In holding the capital outlay provisions of the finance plan unconstitutional, the Wyoming court said: "We hold deficient physical facilities deprive students of an equal educational opportunity and any financing system that allows such deficient facilities to exist is unconstitutional." The court found that, "Capital construction financing is unavailable for many. Safe and efficient physical facilities with which to carry on the process of education are necessary element of the total educational process. State funds must be readily available for those needs." As related to special needs and demographic factors, the high court noted evidence presented by superintendents of challenger districts. Their actual costs exceeded the operating revenue provided through the finance system because the funding plan made no adjustment for varying educational costs. Superintendents also noted the encroachment of special education funding on general school aid. They

provided evidence of deficiencies caused by less than full reimbursement of transportation and special education expenditures. The deficiencies are made up from the revenue meant for education of the general student population [C]ombined deficiencies result in insufficient revenue which can be devoted to average students who comprise the majority of students. The actual number of classrooms and staff and the amount of support needed to educate those students are [therefore] inadequate.

A substantial part of the Ohio decision addressed the appalling condition of Ohio's school facilities, including accommodations for children with disabilities. Citing the "dirty, depressing" conditions of the schools young children attended, the high court also reviewed evidence of the unsafe conditions that existed in the schools. For example, in one school district 300 students were hospitalized because carbon monoxide leaked out of

heaters and furnaces. Asbestos was present in 68.6 percent of Ohio's school buildings and a scant 30 percent had adequate fire alarm systems and exterior doors. There were leaking roofs, outdated sewage systems that caused raw sewage to flow onto the baseball field, and arsenic in the drinking water of certain schools. In other schools, cockroaches crawled on the restroom floors and plaster was falling off of the walls. Only twenty percent of the school buildings in Ohio had satisfactory handicapped access. Like the ruling in Ohio and Wyoming, the lower court in Alabama also found the special education financing system to be unconstitutional.

In Wisconsin, it was argued in part, that the school systems with the greatest educational needs were the least capable of raising sufficient funding through property taxation as a result of lower property valuations or "municipal overburden" that placed greater taxation demands on the property of metropolitan areas. For example, equalized valuation per member varied from a low of \$77,927 to a high of \$988,561 per pupil for districts offering grades kindergarten through 12 (1985-86).

The Level of Funding: Equity and Adequacy

A majority of state court's reviewing the constitutionality of their finance system discuss disparities in funding among school districts within the state and link them to variations in local property tax bases (local wealth) and specific statutory components of the school finance or tax system. These decisions seek to determine whether poor districts are disadvantaged by the financing plan and remedies typically relate to poor districts only. State high courts also have considered the sufficiency of their funding system, and whether funding is adequate to provide the constitutionally mandated level of education programs and services for school districts. These decisions may seek a fiscal remedy for all school systems within the state. For example, the Kentucky high court found the finance system was inadequate and unconstitutional for wealthy and poor districts alike.

Most state high court decisions contrast funding available in the wealthiest and poorest school systems within a state (i.e. at the extremes); or provide comparisons between similar numbers of districts (students) at the top and bottom of the revenue distribution. For example, in Wyoming there were funding disparities per student ranging from \$1,600 to \$4,300. In Montana, the record showed that similar school districts had spending disparities as high as 8 to 1, and 35% of all general fund budgets were obtained from additional levies by local school districts. This meant that at a similar tax rate, wealthy districts raised more funds and poor districts, less.

In Vermont differences in per-pupil expenditures varied from \$2,979 per student to \$7,726 per student (1995). This was 160%

difference. The top 5% of school districts spent from \$5,812 to \$7,803 per student, while the bottom 5% spent from \$2,720 to \$3,608. Therefore, some school districts commonly spent twice as much per pupil as other districts.

In New Jersey, the court noted that school districts at the fifth percentile spent (from state and local sources) \$2,687 per pupil, while those at the 95th percentile spent \$4,755 per pupil. The court used a net current expenditure budgets for most comparisons. These included general education funding with debt service and capital outlay funding excluded, as well as most categorical and transportation funds.

In Texas, "gross" disparities were cited by the court. State funding only accounted for 42% of overall funding, and spending from state and local sources varied from \$2,112 to \$19,333 per student. The court found that funding provided by the state under the finance system (Foundation Program) "does not cover even the cost of meeting the state-mandated minimum requirements." "Most importantly" the court said, "there are no Foundation School Program allotments for school facilities or for debt service" and "the basic allotment and transportation allotment understate actual costs and the career ladder salary supplement for teachers is underfunded."

The Virginia court reviewed disparities in several aspects of the education system:

1. Per pupil spending for general education ranged from \$2,895 to \$7,268. This was a difference of 2.5 times more in some localities than in others.
2. School divisions with low fiscal capacities paid teachers lower salaries than divisions with high fiscal capacities. The average salaries for classroom teachers were 39% higher in some localities than in others and ranged from \$27,471 in the ten poorest school divisions to \$38,095 in the ten wealthiest divisions.
3. The ten wealthiest divisions had an average instructional personnel/pupil ratio of 81.8 teachers for every 1000 students; the ratio in the ten poorest localities was 66.2/1000.
4. Spending for instructional materials was nearly 12 times greater in certain school divisions than in others and ranged from \$17.52 per pupil to almost \$208 per pupil.
5. Spending for library books and supplies was more than 22 times greater in certain divisions than in others and ranged from \$2.22 per pupil to almost \$50 per pupil.

In North Dakota, the court found that as a result of disparities in property values, there were expenditure disparities among school districts. During 1991-92, for instance, disparities ranged from \$11,743 per pupil in Twin Buttes elementary district to \$2,085 in Salund rural school district. All plaintiff school districts had expenditures below the state per pupil average of \$3,425.

In Minnesota, plaintiffs contended, in part, that because some disparities existed in 6-7% of total education revenue generated by local referendum levies, these levies should be held unconstitutional. The court reviewed testimony of a plaintiff expert, who showed that the use of the referendum levy quadrupled between 1983-84 and 1991-92 (from \$205 ppu to \$432 ppu) and that the frequency and extent of its use increased with the size of the tax base. Another plaintiff expert provided the results of a comparative study of paired districts (by location and size) in 14 of the 430 school districts in the state. Plaintiff and intervenor districts were compared with a focus on Edina--who received \$1,334 ppu in levies; versus Elk River--that generated only \$113 ppu. Adjusting for "most other factors," Edina was found to have a \$837 ppu funding advantage over Elk River.

Funding Disparities and Equal Opportunity: Local Ability to Pay for Education and Taxes

State high courts are concerned not only with disparities in the level of funding available to school districts and children, but also whether differences in finances are linked to certain factors that contradict notions of educational opportunity. Chief factors of interest in high court rulings are tax rates and local wealth, i.e., local ability-to-pay for education. In most states, local ability-to-pay for education is based on real estate values within a school district. Equal educational opportunity assumes that funding is not conditioned on whether a child is born in a poor or wealthy locality. Where finance systems have been overturned, courts have often found that poor districts tax high but spend low; and wealthy districts tax low but spend high. Some courts have also shown that due to these factors, poor districts are caught in a vicious cycle of deprivation, from which they are unable to free themselves without judicial intervention.

For example, fiscal disparities among Texas schools were linked to several factors, particularly variations the taxable property wealth of each school system. Comparisons of the wealthiest and poorest districts were cited by the court as well as comparisons of the average property tax base among the 100 wealthiest and 100 poorest districts. The high court noted that taxable property wealth varied considerably among school districts within the state, from \$14 billion per pupil in the wealthiest school system to \$20 thousand per pupil in the poorest district. This was a 700 to 1 ratio. The 300,000 students in the lowest-

wealth schools had less than 3% of the state's property wealth to support their education while the 300,000 students in the highest-wealth schools had over 25% of the state's property wealth; or eight times less than the wealthiest school systems.

The Vermont court found strong and convincing evidence of the relationship between spending and local wealth. It reviewed a Vermont Department of Education analysis that showed statistically significant correlations between a district's spending and its taxable property wealth. For example, the Town of Richford's property tax base was \$140,000 per student, second lowest in the state, and its average student expenditure was also among the lowest, at \$3,743. By contrast, the town of Peru enjoyed a tax base of approximately \$2.2 million per student, and its per-pupil expenditure was \$6,476. According to the study, "spending per pupil . . . tends to be highest in resource-rich districts who benefit further with low school tax rates. . . . [c]onversely towns with limited resources spend less per students [and] pay higher tax rates." The court said that: "Money is not the only variable affecting educational opportunity, but it is one that government can effectively equalize."

Local funding in Tennessee was derived mainly from the sales tax and the property tax (which was less significant). One-half of the local option sales tax was earmarked to education in the county or municipality where the tax was collected. Over time, as economic activity moved from small, local communities to larger regional retail centers in urban counties, the distribution of sales and property tax revenues became more concentrated. By 1986-87, the highest per capita sales tax base was ten times that of the lowest.

Although tax receipts were growing, there was no provision for the equalization of these funds. According to the Tennessee court: "Because of the lack of fiscal capacity, there is little a poor district can do to offset the differences." This resulted in "progressive exacerbation of the inequity inherent in a funding scheme based on place of collection rather than need." In addition, wide disparities were present among wealthy and poor school systems. According to the court, "these were the result of fiscal capacity and not tax effort." Further, the court found, if a county in Tennessee has "low total assessed value of property and very little business activity, that county has, in effect, a stone wall beyond which it cannot go in attempting to fund its educational system regardless of its needs."

In New Hampshire, locally raised real property taxes were the principal source of revenue for public schools, providing on average from seventy-four to eighty-nine percent of total school revenue. Direct legislative appropriations accounted for an average of eight percent of the total dollars spent on public elementary and secondary education, ranking New Hampshire last in the United

States in percentage of direct support to public education. However, the total value of the property subject to taxation for local school revenue varied among the cities and towns of New Hampshire.

A comparison of plaintiff districts, Franklin and its comparison district Gilford, showed that: Franklin's "equalized property value" (property assessed at 100% of fair market value) per student was \$183,626, while Gilford's equalized property value per student was \$536,761. As a result, "property rich" Gilford had a significantly greater assessed value upon which taxes could be imposed for the support of its schools than did Franklin. Gilford raised more money per student than Franklin, even while taxing its residents at lower rates."

Evidence introduced at trial and cited by the New Hampshire court established that the equalized tax rate for the 1994-1995 school year in Pittsfield was \$25.26 per thousand dollars assessed value of property while the rate in Moultonborough was \$5.56 per thousand. The tax rate in Pittsfield, therefore, was more than four times, or over 400 percent, higher than in Moultonborough. Likewise, the equalized tax rate for the 1994-1995 school year in Allenstown was \$26.47 per thousand while the rate in Rye was \$6.86 per thousand -- a difference in tax rates of almost 400 percent. The court concluded: "We need look no further to hold that the school tax is disproportionate and in violation of our State Constitution."

In North Dakota, the value of assessed property per pupil varied widely, as did the tax burden on local residents. During 1991-1992, property values varied from \$77,745 per pupil in Spiritwood to \$145 per pupil in Belcourt. Mill levies ranged from 261.07 in Bell elementary district to zero in the Belcourt high school district. The average valuation statewide was \$7,870 and the average mill levy was 186.89. All plaintiff districts had lower assessed property valuations and higher mill levies than the state averages.

In Illinois the average tax base in the wealthiest 10% of elementary schools was over 13 times the average in the poorest 10%. For high school and unit school districts, these ratios were 8.1 to 1 and 7 to 1, respectively.

Core Finance Data Related to Finance Adequacy: What Money Buys

State high courts reviewing the constitutionality of the school finance system have cited core fiscal indicators of educational opportunity that included not only dollars but also what dollars buy.

For example, the Tennessee high court, finding inadequacy and inequity in the school finance system, invalidated the plan citing

testimony that schools in poorer districts often have "decaying physical plants, some school buildings are not adequately heated," textbooks and libraries are "inadequate, outdated, and in disrepair." Lack of funds prevented poor schools from offering advanced placement courses, more than one foreign language at a high school, state-mandated art and music classes, drama instruction, and extracurricular athletic teams. . . ." In addition, some schools did not provide adequate science laboratories, and "the teachers buy supplies with their own money to stock the labs," or "schools engage in almost constant fundraising by students to provide the needed materials."

In Illinois, plaintiffs argued that disparities among wealthy and poor districts were attributable variations in local property wealth and not tax rates. They were reflected in "key indicators" of educational quality--such as the percentage of teachers with master's degrees, teacher experience, teacher salaries, administrator salaries, pupil/administrator ratios, facilities and course offerings.

In Texas, educational programs in poor districts were not only inferior to wealthy districts, many did not even meet minimum state standards. For example, San Elizario I.S.D. (Independent School District) offered no foreign language, no pre-kindergarten program, no chemistry, no physics, no calculus and no college preparatory or honors program. Its extracurricular programs were almost nonexistent. It had no band, debate or football. On the other hand,

High wealth districts are able to provide for their students broader educational experiences including more extensive curricula, more up-to-date technological equipment, better libraries and library personnel, teacher aides, counseling services, lower student-teacher ratios, better facilities, parental involvement programs, and drop-out prevention programs. They are also better able to attract and retain experienced teachers and administrators.

A comparison of Kentucky to national standards and to adjacent school districts using both input and output measures--including per pupil expenditures, the average teacher's salary, the provision of basic education materials, student teacher ratios, the quality of basic management, physical plant, curriculum, and test scores--showed Kentucky was in the bottom 20% to 25% on most indicators. Thus the Court found the education system was inadequate and unconstitutional for all school districts--both wealthy and poor alike.

In Montana, comparisons of similarly sized high and low spending school districts showed advantages for high spending districts such as "greater budget flexibility to address educational needs and goals" in addition to enriched and expanded curricula, better equipped schools in terms of textbooks,

instructional equipment, audio-visual instructional materials, consumable materials and supplies, computer labs, libraries, and better facilities.

In New Jersey, poorer urban districts--in contrast to more affluent localities--were found to have inferior course offerings, dilapidated facilities, greater student needs, higher drop-out rates, lower educational expenditures and failing scores on the High School Equivalency Test (HSET). The high court found that: the poorer the district, the greater its need, the less the money available and the worse the education.

The New Jersey court held that a thorough and efficient education means more than teaching the basic skills needed to compete in the labor market, although this was important. It means being able to fulfill one's role as a citizen and participate fully in society, in the life of one's community, and to appreciate art, music art, and literature. "However desperately a child may need remediation in basic skills," the court said, "he or she also needs at least a modicum of variety and a chance to excel." Moreover:

If absolute equality were the constitutional mandate, and "basic skills" sufficient to achieve that mandate, there would be little short of a revolution in the suburban districts when parents learned that basic skills is what their children were entitled to, limited to, and no more.

The New Jersey high court opinion cited disparities in education curricula that were linked to local district wealth and spending. For instance, affluent Princeton had one computer per eight children but Camden had one computer per fifty-eight children. Princeton had seven science laboratories in its high school, each with built-in equipment, but some poor urban districts offered science in labs built in the 1920s or 1930s. Others provided no laboratory experience at all, or wheeled science materials around the school on a cart to furnish supplies.

Montclair's students began instruction in French or Spanish at the pre-school level; in Princeton's middle school students took one-half year of French and Spanish and four-year high school programs were available in German, Italian, Russian and Latin in addition to advanced placement courses. In contrast many poorer schools did not offer upper level foreign language courses, and only limited courses were available in high school.

South Brunswick offered music classes starting in kindergarten; Montclair began with preschoolers and every elementary school had an art classroom and art teacher. Several performing groups were available to students in Princeton. In contrast, in 1981 poor Camden eliminated all of its elementary school music teachers and could only provide "helpers" to teach art. Another poor urban school provided an art room in the back of

the lunchroom; and there were no art classrooms at all in East Orange elementary schools.

Many richer suburban school districts had flourishing gymnastics, swimming, basketball, baseball, soccer, lacrosse, field hockey, tennis, and golf teams with fields, courts, pools, lockers, showers, and gymnasiums, but in East Orange the track team practiced in the second floor hallway, and there were no sports facilities. Irvington's elementary schools did not have outdoor play space.

Facilities in poor urban districts were often in disrepair, overcrowded, unsafe and threatened the safety of children. However, most schools in wealthy localities were newer, cleaner and safer. For example, in East Orange, 13 schools needed asbestos removal or containment; 13 required structural system repairs; and 15 had heating, ventilation or air conditioning problems. Moreover, poor urban districts were crowded. In Paterson children ate lunch in a small areas in the boiler room of the basement; remedial classes were taught in a former bathroom. A school in East Orange had no cafeteria and the children ate lunch in shifts in the first floor corridor; and a class was held in a converted coal bin.

IV. Summary: Core Fiscal Data Needs for States Facing Litigation or Seeking to Avoid It Altogether

Table 3 provides a summary listing of core fiscal data needs of states facing litigation, wishing to avoid it altogether, or seeking to evaluate their finance system in an effort to make it more equitable and adequate. The core fiscal data elements are limited, parsimonious, broad and basic. Core fiscal data needed by states include information on statute; fiscal data elements (and student numbers) related to each statutory element; data related to the local ability-to-pay for education; funding data; taxes; and demographic data.

State Statute and State-Local Funding

States need to decompose elements of their finance system for elementary and secondary education, describe them and develop fiscal data on each element of the system for state and local sources. A key measure of interest is state and local funds available to school systems within the state. These are usually expressed in per pupil terms. Also of interest is funding available per pupil for each component of the finance system. For instance, accounts may include equalization aid, transportation assistance, special student allotments--such as funds for special education, remedial education, and vocational education; and funds for high cost districts--such as allotments for small and sparse districts/schools and urban areas. If cost adjustments are provided in the state finance system, then the amount of the allotment by

district is needed. Direct state appropriations for capital improvements, building or renovation should be specified, as well as funding for technology, minimum aid, and hold harmless allotments. Also needed are data on local funds that are raised outside the funding system at the local level. These are referred to as "local leeway" funds and included in local budgets. They may be raised from income, sales or property taxes and should be decomposed by source. Also of interest, is funding decomposed by function and object. The mix and type of funds will necessarily differ by state, as state formula differ as do the needs of students and school systems.

Importantly, for each data element used in the formula, data years should be specified as well as the number of eligible students. For equalization aid, for example, the count of students used for aid purposes should be provided and specified--such as average daily membership, average daily attendance, or average number belonging. If funds are distributed to localities based on equalized valuation, the data year should be specified (see below). For special components, the eligible student population should be specified as well as the number of students receiving aid under the formula. For example, if remedial education funding is provided for grades K-3, the eligible K-3 population should be provided by factor, such as free and reduced price lunch count.

Federal Statute and Federal Aid

Fiscal data elements are needed by district, for each federal program. Data on funding amounts by program include: ESEA, Title I (compensatory education) and Title VII (bilingual education). Also, funding for vocational education (Perkins grants) and special education (Individuals With Disabilities Education Act, Part B), impact aid, and Goals 2000 funds should be detailed. As discussed above, eligible student populations should be specified for each component. Of these, the largest accounts are ESEA, Title I, Special Education, Part B, and, for some districts, Impact Aid.

Local Ability-to-Pay for Education

An important data element of interest to courts assessing fiscal equity is the measure of local ability-to-pay for education used in the state formula for distribution purposes. In most states this is the per pupil local taxable property wealth by school district equalized by the state. In some states, an index is used. In this case, the components of the index should be disaggregated by district. For example, in Virginia the local composite index is based on income, sales and property values and then adjusted for the number of students in average daily membership (ADM) and per capita. The corresponding data needs include information on each component by district and total for the state: property values, adjusted gross income, sales revenue, per capita figures, and student counts used for funding purposes.

Equalized value is the full market value of property taxed for school purposes and equalized by the state for variations in assessment practices. This usually consists of residential and business property. If less than full market value is used in the finance formula calculations, then the fractionalized value should be stated.

Also of interest is the income per capita, by district and statewide.

Tax Rate

A common data element of interest to the courts is local tax rates for school purposes. This can be computed as a percentage by dividing local revenues by the equalized value of property. It will provide the tax rate per \$100 of equalized valuation. If mills are used, then the tax rate is per \$1000 of equalized valuation. Thus, the rate as well as the units of equalized value used should be provided (e.g., per \$100 EV or per \$1000 EV). If separate taxes are levied for buildings, or for sinking funds, then this rate should be provided by district, as another data element.

Demographics

State demographic data should also be specified by school system and include the total enrollment and number of students used for funding purposes. Also of interest is the number of students with disabilities, by disability category, the total number of children in poverty (using census data or free and reduced price lunch counts), and the number of students with limited English proficiency. Also of interest, if available, is the number of students retained, graduation rate, and test scores, by district.

Facilities

Information on facilities is becoming an important element in finance litigation. Data should include the age of the building, square footage per pupil, labs, libraries, physical education facilities, art rooms, and estimated renovation costs and deficiencies, such as asbestos, by district. Also, information on the accessibility of school buildings for students with disabilities is of interest.

These core fiscal data will assist states facing litigation, wishing to avoid it altogether, or seeking to evaluate their finance systems in an effort to make it more equitable and adequate. The core finance data elements are limited, parsimonious, broad and basic.

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¹¹ This includes oral and written communication, economic, social and political systems; governmental processes; self-knowledge; art; and vocational training.

Appendices

Fiscal Criteria Used to Measure Constitutional Compliance: A State by State Analysis of Supreme Court Decisions on the Constitutionality of the School Finance System (Since 1989)

Appendix A:

Court Challenges Where Plaintiffs Have Prevailed

Appendix B:

Court Challenges Where Defendants Have Prevailed

Appendix A

Court Challenges Where Plaintiffs Have Prevailed

Plaintiffs have prevailed in eleven states since 1989. In these cases high courts have found the school finance system unconstitutional, based on various facts and multiple rationales. They are reviewed below with attention to fiscal data elements included in the high court opinion.

Edgewood Independent School District v. Kirby--Texas (1989).¹ In Texas, the court invalidated the school aid system three times in a period of less than 28 months. By state constitutional mandate, the legislature was required to make "suitable" provision for an "efficient" system of education. The court noted that these are "not precise terms, [but] they do provide a standard" by which the court could measure the constitutionality of the legislature's actions.

After reviewing the history of the state constitution and the fact set presented, the court concluded that the finance system violated the constitutional provision for an "efficient" system, stating: "It is apparent from the historical record that those who drafted the constitution never contemplated the possibility that such gross inequalities could exist within an 'efficient' system." The court stated baldly that such "inequalities are directly contrary to the constitutional vision of efficiency." At a later date the Texas court explained: "the goal of the constitution is not fiscal neutrality. Fiscal neutrality is merely a test for efficiency. Moreover the goal is not efficiency for the sake of efficiency, but because efficiency produces the general diffusion of knowledge essential to the preservation of our liberties and rights."

Gross disparities among Texas schools were established through several measures. First, was a measure of local ability-to-pay for schools which was based on the taxable property wealth of each school system. Comparisons of the wealthiest and poorest districts were provided as well as comparisons of the average property tax base among the 100 wealthiest and 100 poorest districts. The high court noted that taxable property wealth varied considerably among school districts within the state, from \$14 billion per pupil in the wealthiest school system to \$20 thousand per pupil in the poorest district; this was a 700 to 1 ratio. The 300,000 students in the lowest-wealth schools had less than 3% of the state's property wealth to support their education while the 300,000 students in the highest-wealth schools had over 25% of the state's property wealth; or eight times more than the wealthiest school systems.

Second, fiscal disparities were a major determinant in the high court's ruling. Due to wide variations in local property wealth, school spending disparities were large, ranging from \$2,112 to \$19,333 per pupil, and they were linked to local wealth (ability-to-pay for education). For the 150,000 students in the wealthiest districts versus the 150,000 students in the poorest districts, an average of \$2,000 more per pupil was spent per year.

In addition, the court found that "[g]enerally, the property-rich districts can tax low and spend high while the property-poor districts must tax high merely to spend low."² Data showed that in 1984-85, local tax rates ranged from \$.09 to \$1.55 per \$100 valuation. Average tax rates in the 100 poorest districts were 74.5 cents and spending was \$2,987 per pupil. They were 47 cents in the 100 wealthiest districts who spent an average of \$7,233 per pupil. Homestead exemptions and tax havens exacerbated this situation as did elements of the state aid system, such as provisions for "budget balanced districts."

Moreover, the court found that poor districts were "trapped in a cycle of poverty from which there is no opportunity to free themselves."³ They must tax at significantly higher rates than wealthy districts just to meet minimum requirements for accreditation, yet "their education programs are typically inferior."⁴ Furthermore, they are unable to improve their tax base by attracting new industry, because industry typically locates in areas with low taxes and quality local schools.

The court noted that funding provided by the state under the finance system (Foundation Program) "does not cover even the cost of meeting the state-mandated minimum requirements."⁵ "Most importantly" the court said, "there are no Foundation School Program allotments for school facilities or for debt service" and "the basic allotment and transportation allotment understate actual costs and the career ladder salary supplement for teachers is underfunded."⁶

Importantly, educational programs in poor districts were not only inferior to wealthy districts, many did not even meet minimum state standards. For example, San Elizario I.S.D. (Independent School District) offered no foreign language, no pre-kindergarten program, no chemistry, no physics, no calculus and no college preparatory or honors program. Its extracurricular programs were almost nonexistent. It had no band, debate or football. On the other hand,

High wealth districts are able to provide for their students broader educational experiences including more extensive curricula, more up-to-date technological equipment, better libraries and library personnel, teacher aides, counseling services, lower student-teacher ratios, better facilities, parental involvement programs, and drop-out prevention

programs. They are also better able to attract and retain experienced teachers and administrators.⁷

Finding the system unconstitutional, the high court opined, the "amount of money spent on a student's education has real and meaningful impact on the educational opportunity offered that student."⁸

Rose v. The Council for Better Education, Inc. et al.-- Kentucky (1989).⁹ In Kentucky, in the first ruling of its kind, the high court dramatically extended the reach of school finance litigation and found the entire education system unconstitutional -- not just the finance system--including the statutes creating, implementing, governing, and financing the system, and all regulations. The findings were based on a comparison of Kentucky to national standards and to adjacent school districts using both input and output measures--including per pupil expenditures, the average teacher's salary, the provision of basic education materials, student teacher ratios, the quality of basic management, physical plant, curriculum, and test scores. Finding Kentucky was in the bottom 20% to 25% on most indicators, the Court found the education system was inadequate for all school districts--both wealthy and poor alike.

The high court noted that extensive and voluminous evidence was presented in the case and led to its conclusion that "students in property poor districts receive inadequate and inferior educational opportunities as compared to those offered to those students in the more affluent districts."¹⁰ It noted wide variations in financial resources and "dispositions thereof" that related to unequal educational opportunities throughout Kentucky.

Variations among poor and rich districts were found in: finances, taxable property, curricula (especially foreign language, science, mathematics, music and art) test scores, and student-teacher ratios. Experts testified that "without exception, there is great disparity among poor and wealthy districts in Kentucky regarding basic educational materials, student-teacher ratio; curriculum; size, adequacy and condition of physical plant; and quality of basic management." They found "a definite correlation between the amount of money spent per child on education and the quality of education received--which was corroborated by evidence."¹¹

Not only did poorer districts provide an inadequate education; when judged by "accepted national standards" affluent districts' efforts were found to be inadequate as well.¹² Comparisons of Kentucky with adjacent states--Ohio, Indiana, Illinois, Missouri, Tennessee, Virginia, and West Virginia--included rankings on per pupil expenditures, average annual salary of instructional staff, classroom teacher compensation, property tax revenue as a percent of total revenue, percent of ninth grade students graduating from high school, pupil-teacher ratio, and ACT scholastic achievement

test scores. The data showed Kentucky ranked nationally in the lower 20-25% in virtually every category that was used to evaluate educational performance; and did not provide uniform opportunities among the school districts.

Deficiencies in the state aid system included a minimal, mandated local tax rate that was so low that only a fraction was equalized by the state and a history of school funding where "every forward step taken to provide funds to local districts and to equalized money spent for the poor districts has been countered by one backward step."¹³

The high court, found education to be a fundamental right and the finance system, unconstitutional. In invalidating the system of common schools, the high court stated: "This decision applies to the entire sweep of the system and all its parts and parcels."¹⁴ The court also listed nine essential and minimal characteristics an "efficient" system of common schools would include, including an "adequate education" which had as its goal the development of seven capacities that were enumerated by the high court.¹⁵ The General Assembly was charged to "re-create, re-establish a new system of common schools in the Commonwealth,"¹⁶ as well as assuring all real and personnel property was assessed at 100% of its fair market value and that there would be a uniform tax rate for such property.¹⁷

Helena Elementary School Dist. v. State--Montana. (1989)¹⁸ In Montana, the high court struck down the finance system based on the "plain" meaning of the education article, after reviewing it to determine whether all children had equal access to a quality education--not a basic or minimum education. It found the system inadequate to this task, noting that the accreditation standards provided only a "minimum upon which a quality education can be built."¹⁹

Comparisons of similarly sized high and low spending school districts showed advantages for high spending districts such as "greater budget flexibility to address educational needs and goals" in addition to enriched and expanded curricula, better equipped schools in terms of textbooks, instructional equipment, audio-visual instructional materials, consumable materials and supplies, computer labs, libraries, and better facilities.

The evidence demonstrated that the "wealthier school districts are not funding frills. . . ." ²⁰ and disparities could not be described as the result of local control. In fact, the present system "may be said to deny to poorer school districts a significant level of local control, because they have fewer options due to fewer resources."²¹

Testimony and evidence focused on the complex system of funding Montana's elementary and secondary schools. It showed that

the equalization system--the Foundation Program--funded from state and local sources, furnished 81.2% of all general fund revenues in Montana. This left less than 20% to be funded outside the program, from additional local levies on property taxes voted on by each school district and from other sources. By 1985-86, 35% of General Fund budgets were derived from these sources (locally voted levies on property and other revenues such as vehicle taxes, interest income, tuition and federal "874" funds).

Evidence showed that wealthy districts were able to rely on the voted levy to a greater extent than poor districts to generate revenues for their General Fund. The evidence also established great differences in wealth and "more significantly," according to the court, spending differences as high as of 8 to 1 in comparisons among similarly sized school districts. Three types of comparative evidence were used to establish "spending differences among similarly sized school districts in the state result in unequal educational opportunities for students."²²

First, witnesses contrasted their experiences in two school districts, very close in size, at both elementary and high school levels to illustrate the ability of wealthy districts to raise excess funds from the locally voted levy. One district, Geraldine had a taxable value twice that of Drummond and spent an additional \$1,000 more per ANB (average number belonging, i.e. pupil). Over 40% of Geraldine's funds derived from the voted levy, while Drummond's voted levy supplied only 15% of its general fund revenue. Therefore, Geraldine had more advantages and opportunities, it had "more budget flexibility" to address educational needs and goals than did Drummond.²³

A second comparative study consisted of several pairs of school districts in the state--three pairs of elementary districts and three pairs of secondary districts. Schools in each pair were a similar size, with one spending considerably more per pupil than the other. Study data were contrasted and a team visited each school to conduct interviews "first hand" with administrators and teachers. The study team identified clear differences between the pairs. Better funded schools tended to offer more enriched and expanded curricula, were better equipped in terms of textbooks, instructional equipment, audio-visual instructional materials, and supplies, and had better building maintenance. The team concluded, in part, "the availability of funds clearly affects the extent and quality of the educational opportunities."²⁴

A third comparative study of "educational opportunities" in high and low spending districts, using an extensive checklist of indicators, arrived at the same conclusion. Wealthier districts offered more classes in science, home economics and industrial arts, with better and more equipped facilities; they had wider and more enriched range of courses in the language arts, including foreign language, art, music, and physical education. Gifted and

talented programs were much stronger than those in poor districts. However, many low expenditure districts could not afford to offer any gifted and talented classes at all.

In finding the system unconstitutional the court said: "The state has failed to provide a system of quality public education granting to each student the equality of educational opportunity (emphasis added)."²⁵ The Montana court found unpersuasive the state's "outputs theory of measurement," stating unequivocally: "spending disparities among the State's schools translate into a denial of equality of educational opportunity."²⁶

Abbott v. Burke--New Jersey (1990).²⁷ The watershed New Jersey decision, Abbott v. Burke (1990), is unique in that it held the state finance system unconstitutional not in total, but for a specific class of districts only--namely poorer urban districts. The decision is historic because the court called for more than equity between rich and poor districts. Poor urban children and youth need more programs and services, the court opined, and funding imbalances must favor the least advantaged.

Using multiple indicators, poorer urban districts--in contrast to more affluent localities--were found to have inferior course offerings, dilapidated facilities, greater student needs, higher drop-out rates, lower educational expenditures and failing scores on the High School Equivalency Test (HSET).

The court pointed out that the major issues in the case were similar to those litigated in various state courts over the 1970s and 1980s: "an education funding system that depends on a combination of state and local taxes producing disparity of expenditures in the face of inverse disparity of need."²⁸ However, very few of those cases had a factual record that even began to approach that before the court in 1990.

For example, the Abbott court explained, in Robinson I (1973) the record was primarily limited to the funding scheme, its impact, and demographic data. It lacked significant evidence of substantive educational content.²⁹ The court quoted the Robinson ruling that said:

The trial court found the constitutional demand had not been met and did so on the basis of discrepancies in dollar input per pupil. We agree. We deal with the problem in those terms because dollar input is plainly relevant and because we have been shown no other viable criterion for measuring compliance with the constitutional mandate.³⁰

However, there was change in focus from dollar disparity in Robinson I (1973) to substantive educational content in Robinson V (1976)--the main theme underlying the court's determination that a newly passed Act in an effort to meet the court's mandate was

facially constitutional. The only question about financing in Robinson V, was not whether there were equal dollars between and among students and districts, but whether they were sufficient to support the entire system and its goal of achieving a thorough and efficient education throughout the state as required by the state constitution. According to the court, the "clear thrust of our decision was to render equal dollars per pupil relevant only if it impacts on the substantive education offered in a given district."³¹

The Robinson court defined a thorough and efficient education as one that equips its students to fulfill their roles as citizens and competitors in the marketplace.³² Referring to that mandate, the Abbott court queried in 1990: "What does the comparison [of poor urban districts] with affluent suburban districts mean if the Constitution indeed requires that poor children be able to compete with the rich?"³³ Did the Act, as applied over time, meet constitutional muster?

Like other finance cases, the Abbott court addressed statutory deficiencies in the funding structure related to fiscal inequity and achieving the constitutional mandate. It found that funding was based not on present need but on the prior year's budget and did not address capital construction needs.³⁴ Minimum aid provisions, which provided additional assistance to advantaged districts without regard to need, were held to be unconstitutional; as was pension aid, which provided more funds to wealthy localities who employed relatively more teachers and provided higher salaries. But categorical assistance and transportation aid, which benefitted poor and wealthy districts alike, was not invalidated; nor were the limitations (caps) placed on equalization aid and school budgets, because they did not effect poor, urban districts who could not raise additional funds for education.

The high court dwelt in considerable detail on the state defense of the statutory approach intended to achieve a thorough and efficient education. According to the state, constitutional compliance was achieved not through money but through standards, reporting, monitoring, corrective provisions and rules and regulations. The state also argued that the Act guaranteed a thorough and efficient education by virtue of the school districts' unlimited power to tax. In addition, the Commissioner asserted, the determinants of the quality of education are not found in school resource inputs, but in other areas--areas that transcend the relationship between the money spent and the education obtained--such as community relations, management and parental interest. This was referred to as the "effective schools" concept. In this view, "expenditure disparity becomes irrelevant."³⁵

The high court also pointed out that the state's position in Abbott I was almost the reverse of one of the premises of previous case law (i.e. Robinson I) that "dollar input was plainly relevant."³⁶ Moreover, decisions regularly made by school districts,

the Commissioner and the Board were all based on the "premise that what money buys affects the quality of education" and the "entire state aid system is based on the assumption that money makes a difference in the quality of education."³⁷

The court held that the process standards presented by the state and applied to local schools, provided largely "circumstantial" evidence of a thorough and efficient education and were insufficient to exclude consideration of dollar input and expenditure disparities.³⁸ The high court found unpersuasive the state's assertions stating that if "effective schools" is a desirable approach, it should be superimposed on a structure that starts out equally. However, the court noted the importance of linking both finance and substantive education content in the determination of the Act's constitutionality.

we doubt that any showing of expenditure disparity in the absence of some independent evidence of substantive failure [in a poor urban district's education] would warrant a conclusion that a thorough and efficient education does not exist. (emphasis in original)³⁹

Although administrative procedures and monitoring "suggests a certain educational content," there was no independent assessment of the adequacy of the goals, the quality of the educational content or how these factors related to children's needs. There were no conventional measures of educational quality:

no standard of the breadth of the curriculum that must be offered, no standard of other commonly accepted educational criteria (staffing ratios, faculty experience and training, staffing of special positions and their numbers), and no broad-gauged standard of performance of any district, school or pupil apart from the statewide tests.⁴⁰

Evidence presented by the plaintiffs of disparities among poor and affluent districts with regard to these factors--referred to by the court as "strong indicators of educational quality"⁴¹--supported the conclusion that the absolute level of education in poorer urban districts was deficient. The court asked: "If these factors are not related to the quality of education, why are the richer districts willing to spend so much for them?"⁴²

Plaintiffs, did not attack the statutory definition of thorough and efficient presented by the State but contended that without adequate funding it could not be achieved. They showed that expenditure disparities resulted in disparities in education content and deprived children in poor districts of a thorough and efficient education, by focusing on 1) the failure of education in poorer urban districts and 2) the comparison between this education and that of the richer suburban districts.

The evidence linked disparities in funding among districts in the state to factors such as: district wealth, student need, the ability to raise funds through taxes (municipal overburden), the likely permanence of these factors under current conditions, the level of substantive education actually being given, students' failure and drop out rates and attendance at college.

Districts were grouped by 1) expenditure level per pupil (or equalized value per pupil), 2) socioeconomic status (SES)-including multiple factors and were also referred to as "district factor groupings" (DFG) and 3) urban aid districts, who were targeted by a formula that included municipalities of a certain size, with a certain number of children whose families were on welfare, have public housing, and a higher tax rate or lower property valuation per capita. Other factors were then compared to these groupings. For example, variables compared to District Factor groupings included test scores, school property tax rates and municipal property tax rates, urban/non-urban status, and percent minority. For the expenditure groupings (or equalized valuation per pupil)--each with 1/7 of the state's students--correlations included equalized valuation per pupil, minority concentrations, and school (and municipal) tax rates.

Expenditure levels were defined as the net current expense budget per weighted pupil (NCEB), excluding debt service, capital outlay and federal aid. Essentially this provided a measure of funds per pupil for general education and included equalization aid and local revenues, with federal aid excluded. The court reasoned that although federal aid increased spending in poor districts and lowered financial disparities between poor and wealthy school systems, federal aid should be excluded because the State's constitutional obligation was not adequately satisfied if dependent on federal aid.

Comparisons were made of districts at the high and low ends of the spectrum. The court noted a significant disparity in funding, and presented fiscal analyses in the opinion, using several types of information: funding both with and without inflation, funding excluding and including federal aid and categorical aid, and net current expense budgets (NCEB) weighted by pupils and excluding most federal aid (i.e., ESEA, Title I).

Comparisons were made of the highest and lowest spending districts, with all districts included and with the top and bottom 5% of districts excluded. The analyses showed, for instance, when the top and bottom 5% of districts were excluded from analysis, inflation adjusted disparities in funding grew from \$895 per pupil in 1975-76 (before the Act) to \$1,135 per pupil in 1984-85. Thus, a group of richer districts with 189,484 students spent 40% more than a group of poorer districts with 355,612 students.⁴³

In terms of DFGs, for 1984-85, the average expenditure (NCEB) in DFG A was \$2,909; in DFG J, \$4,154; the state average was \$3,329. Thus the average NCEB of a 10,000 pupil district in DFG A or B was \$11.7 million lower than it would be in a DFG I or J district of the same size. For property wealth, the state average equalized valuation per pupil was \$190,409; in DFG A, it was \$78,222; in DFG J, \$302,593. Thus, the court said, "the richer districts spend more than the poorer, and their ability to do so is correlated to their wealth."⁴⁴

The high court concluded that although the statistical analyses were the subject of dispute and "each [analysis based on groupings] tells a different story, they add up to essentially the same conclusion: the poorer the district, the greater its need, the less the money available and the worse the education."⁴⁵ The poorer and more urban the district, the heavier its municipal property tax rate, the greater the school tax burden. "Whatever the measure of disadvantage, need and poverty--the greater it is, the less there is to spend."⁴⁶

State's witnesses argued that the analysis was "rudimentary," consisting largely of comparisons "at the high and low ends of the spectrum," and that the asserted relationship should be tested against the entire distribution.⁴⁷ The court said that these relationships may, in fact, be significant only when the extremes are compared but "that gives little comfort to those students confined to the poorest districts" numbering 280,081. "Their deprivation is real, of constitutional magnitude, and not blunted in the least by the State's statistical analysis."⁴⁸

The court pointed out that although the significance of a student's SES and the ability of effective education to overcome it are the subject of intensive investigation and debate, yet, the case was decided on "the premise that children of the poorer urban districts are as capable as all others" and can "perform as well as all others." Importantly, the court said "Our constitutional mandate does not allow us to consign poorer children permanently to an inferior education. . . ."⁴⁹

A comparison of education curriculum between poorer urban districts and affluent suburban districts--the very best against the very worst--also revealed the constitutional failure of education in poorer urban areas. In addition to crumbling facilities and impaired safety of children in some poor urban districts, the level of education, was "tragically inadequate." Education programs in many poorer districts were vastly inferior to wealthy districts; essentially they were "basic skills" districts where the curricula was:

denuded not only of advanced academic courses but of virtually every subject that ties a child with academic problems to

school--of art, music, drama, athletics, even, to a very substantial degree of science and social studies. . . .

The court held that a thorough and efficient education means more than teaching the basic skills needed to compete in the labor market, although this was important. It means being able to fulfill one's role as a citizen and participate fully in society, in the life of one's community, and to appreciate art, music art, and literature. "However desperately a child may need remediation in basic skills," the court said, "he or she also needs at least a modicum of variety and a chance to excel."⁵⁰ Moreover:

If absolute equality were the constitutional mandate, and "basic skills" sufficient to achieve that mandate, there would be little short of a revolution in the suburban districts when parents learned that basic skills is what their children were entitled to, limited to, and no more.

The opinion cited disparities in education curricula that were linked to local district wealth and spending. For instance, affluent Princeton had one computer per eight children but Camden had one computer per fifty-eight children. Princeton had seven science laboratories in its high school, each with built-in equipment, but some poor urban districts offered science in labs built in the 1920s or 1930s. Others provided no laboratory experience at all, or wheeled science materials around the school on a cart to furnish supplies.

Montclair's students began instruction in French or Spanish at the pre-school level; in Princeton's middle school students took one-half year of French and Spanish and four-year high school programs were available in German, Italian, Russian and Latin in addition to advanced placement courses. In contrast many poorer schools did not offer upper level foreign language courses, and only limited courses were available in high school.

South Brunswick offered music classes starting in kindergarten; Montclair began with preschoolers and every elementary school had an art classroom and art teacher. Several performing groups were available to students in Princeton. In contrast, in 1981 poor Camden eliminated all of its elementary school music teachers and could only provide "helpers" to teach art. Another poor urban school provided an art room in the back of the lunchroom; and there were no art classrooms at all in East Orange elementary schools.

Many richer suburban school districts had flourishing gymnastics, swimming, basketball, baseball, soccer, lacrosse, field hockey, tennis, and golf teams with fields, courts, pools, lockers, showers, and gymnasiums, but in East Orange the track team practiced in the second floor hallway, and there were no sports

facilities. Irvington's elementary schools did not have outdoor play space.

Facilities in poor urban districts were often in disrepair, overcrowded, unsafe and threatened the safety of children. However, most schools in wealthy localities were newer, cleaner and safer. For example, in East Orange, 13 schools needed asbestos removal or containment; 13 required structural system repairs; and 15 had heating, ventilation or air conditioning problems. Moreover, poor urban districts were crowded. In Paterson children ate lunch in a small area in the boiler room of the basement; remedial classes were taught in a former bathroom. A school in East Orange had no cafeteria and the children ate lunch in shifts in the first floor corridor; and a class was held in a converted coal bin.

In striking the system down as unconstitutional for the fifth time since the Robinson case in 1973 the court found that municipal overburden effectively prevented poor urban districts from raising substantially more money for education, and called for substantial equity in spending among poor and affluent districts with imbalances favoring the needy.⁵¹

Tennessee Small School Systems, et al. v. McWherter--Tennessee (1993).⁵² The Tennessee high court, finding inadequacy and inequity in the school finance system, invalidated the plan. The court cited testimony that schools in poorer districts often have "decaying physical plants, some school buildings are not adequately heated," textbooks and libraries are "inadequate, outdated, and in disrepair." Lack of funds prevents poor schools from offering advanced placement courses, more than one foreign language at a high school, state-mandated art and music classes, drama instruction, extracurricular athletic teams. . . . " Some schools do not provide adequate science laboratories, "the teachers buy supplies with their own money to stock the labs," or "schools engage in almost constant fundraising by students to provide the needed materials." Differences in spending among poor and wealthy districts in Tennessee varied considerably, ranging from \$1,823 to \$3,669.⁵³ The court found "a direct correlation between dollars expended and the quality of education a student receives."

In addition, in wealthier school districts (1988-89), 66% of the elementary schools and 77% of the secondary schools were accredited compared to 7% and 40% among the ten poorest districts.

All of the schools in [wealthy] Kingsport and Shelby County districts are accredited. In contrast, none of the [poor districts in] Clay County, Wayne County, Hancock County and Crockett County schools are accredited.⁵⁴

In addition, students attending the unaccredited schools have a higher need for remedial courses at college, the court pointed out, "resulting in poorer chances for higher education."⁵⁵ This resulted

in a "vicious cycle" where poor districts without accreditation, could not recruit new industry and related business to the area. Without additions to the tax base provided by new industry the property and sales tax base will continue to decline, further reducing funds available for schools.⁵⁶

Public education in Tennessee was funded approximately 45% by state, 45% by local government, and 10% by the federal government. The largest source of state funds was the Tennessee Foundation Program (TFP); categorical aid made up the additional state funds. However, TFP funds provided less than \$60 million out of an expenditure of \$2.5 billion. Adjustments were made for training and experience of teachers which resulted in more funds to wealthier districts with better trained and more experienced teachers. Thus, according to the court, "state funds provide little real equalization."⁵⁷ In addition, testimony from the Chairman of the Board of Education indicated that the "TFP does not relate appropriations to actual costs of delivering programs and services--"a conclusion also reached by the high court.⁵⁸

Local funding in Tennessee was derived mainly from the sales tax and the property tax (which was less significant). One-half of the local option sales tax was earmarked to education in the county or municipality where the tax was collected. Over time, as economic activity moved from small, local communities to larger regional retail centers in urban counties, the distribution of sales and property tax revenues became more concentrated. By 1986-87, the highest per capita sales tax base of highest locality was ten times that of the lowest.

Although tax receipts were growing, there was no provision for the equalization of these funds. According to the court: "Because of the lack of fiscal capacity, there is little a poor district can do to offset the differences." This resulted in "progressive exacerbation of the inequity inherent in a funding scheme based on place of collection rather than need." In addition, wide disparities were present among wealthy and poor school systems.⁵⁹ According to the court, "these were the result of fiscal capacity and not tax effort."⁶⁰

The court cited findings from a study by the State Comptroller comparing tax rates, the actual revenues collected for schools and the revenues available. For example, the study showed:

. . . 15 of the 20 school districts with the lowest potential [to raise funds] . . . had actual revenues for education greater than their potential. . . . These counties tax at higher than the statewide average. Thirteen of the 20 school districts with the highest potential--those at the top of the list--have actual revenues for education below their potential. These counties taxes at below the state average.⁶¹

The defendants argued, in effect, that the state was "doing its best" but that local control resulted in wide disparities in funding across the state. The court rejected both arguments, noting that there "has been no showing that a discriminatory funding scheme is necessary to local control."⁶² Further, the court found, if a county has "low total assessed value of property and very little business activity, that county has, in effect, a stone wall beyond which it cannot go in attempting to fund its educational system regardless of its needs."⁶³

In finding the finance system unconstitutional, the court said the proof "fails to show a legitimate state interest justifying the granting to some citizens, educational opportunities that are denied to other citizens similarly situated;" therefore it fails to satisfy even the lowest test of constitutionality, the rational basis test.⁶⁴ The court noted that the essential issues were "quality and equality of education" not equality of funding. Nor was the issue "sameness" as an adequate system would include innovative and progressive features and programs; and would not lower the quality of education in the state to the lowest common denominator.⁶⁵

McDuffy v. Sec'y of Exec. Off. of Educ.--Massachusetts (1993).⁶⁶ Admonishing that "Our Constitution , and its education clause, must be interpreted "in accordance with the demands of modern society," the Massachusetts Court cited evidence that indicated "less affluent school districts were offered significantly fewer educational opportunities and lower educational quality than students in schools in districts where per pupil spending was among the highest of all Commonwealth districts." These high spending districts, the Court said, "are able to educate their children" calling for the state to fulfil its obligation "to educate all its children."

The high court reviewed the facts in the case leading to the conclusion that the Commonwealth was in violation of its constitutional duty to provide all public school students with an "adequate" education. A comparison of four of the sixteen towns and cities in which plaintiff's lived and attended school (Brockton, Winchedon, Leicester, and Lowell) were compared to wealthier communities with expenditures in the top 25% of school spending in the Commonwealth (Brookline, Concore, and Wellesley). The comparisons showed disadvantages for the poorer schools. Inadequacies in plaintiff's districts resulted in fewer educational opportunities and lower educational quality" than found in wealthier districts. These localities were sufficiently typical of districts in their classes, according to the decision.

Poor districts, the high court opinion noted, had inferior educational programs and conditions including: crowded classes; reductions in staff; inadequate teaching of basic subjects including reading, writing, science, social studies, mathematics,

computers, and other areas; neglected libraries; the inability to attract and retain high quality teachers; the lack of teacher training; the lack of curriculum development; the lack of predictable funding; administrative reductions; and inadequate guidance counseling.

In contrast, wealthy districts were characterized by: multi-faceted reading programs; extensive writing programs and resources; thorough computer instruction; active curriculum development and review ensuring a comprehensive and up-to-date curriculum; extensive teacher training and development; comprehensive system-wide student services; and a wide variety of courses in visual and performing arts."⁶⁷

Funding levels in plaintiff schools were "substantially less" than the financial resources of public schools in other towns and cities of the Commonwealth; so low as to render poor localities "unable to furnish student's an adequate education."⁶⁸ Plaintiffs claimed the state funding system was responsible for "wide disparities" and "insufficiencies" in education support.

Several interrelated statutory deficiencies were enumerated by the plaintiffs.⁶⁹ First, under the existing "system" the principal source of funds for public schools were local funds drawn from the property tax. Towns and cities with low real estate valuations, were "severely limited" in their ability to raise local funds. Second, there was no statutory requirement for the local contribution to the state aid program. Third, state aid was minimal and insufficient to compensate for variations in local revenues across the state. Fourth, state aid was unpredictable and in some years not granted until after the school year has begun. Fifth, state aid for schools was "undifferentiated" from state aid for other municipal purposes and there is no requirement it be used solely for schools.

The plaintiffs did not claim that the Commonwealth had an obligation to equalize educational spending across all towns and cities or to provide equal opportunities to all children. Instead, they sought declaratory judgement that Massachusetts's constitutional provisions required the Commonwealth to furnish each child and youth with an adequate education. That is, they called for "equal access to an adequate education, not absolute equality."⁷⁰

A thorough review of education and constitutional history in Massachusetts, dating as far back as the founding of common schools in America under the 1647 "Ye Ol Satan Deluder Law" led the court to an inescapable conclusion: that education was a fundamental right and critical to a democratic system of government; and the finance system was inadequate and unconstitutional. The high court called on the "magistrates" and "Legislatures of this Commonwealth" to: "provide education in the public schools for the children there

enrolled, whether they be rich or poor and without regard to the fiscal capacity of community or district in which such children live."⁷¹

Roosevelt Elem. School Dist. v. Bishop--Arizona (1994).⁷² In an unusual high court case in Arizona, as a result of the state's failure to provide a "thorough and uniform" education, the Court found the finance statutes relating to capital outlay provisions of the state finance system unconstitutional. The high court observed that the "undisputed record" showed the state system was not uniform. There were enormous facility disparities across the state. However, the court explained that it was not the existence of disparities between or among districts that resulted in a constitutional violation. The critical issue was "whether disparities among school districts were the result of the financing scheme the state chooses,"⁷³ because the system the legislature chooses to fund the public schools must not itself be the cause of substantial disparities. The evidence showed that "enormous disparities are a direct result of the state's financing scheme." Therefore, the high court found "the system, taken as a whole" was unconstitutional.⁷⁴

According to the facts presented in the case, facilities varied enormously across the state and were directly proportional to the value of real property within the district--including commercial property and power plants. For example, the high court said:

There are disparities in the number of schools, their condition, their age, and the quality of classrooms and equipment. Some districts have schools that are unsafe, unhealthy and in violation of building, fire and safety codes. Some districts use dirt lots for playgrounds. There are schools without libraries, science laboratories, computer rooms, art programs, gymnasiums, and auditoriums. But in other districts, there are schools with indoor swimming pools, a domed stadium, science laboratories, television studios, well stocked libraries, satellite dishes, and extensive computer systems.⁷⁵

Facility disparities, the court pointed out, resulted from heavy reliance on local property tax revenues which also varied enormously across the state. For instance, the assessed value of Ruth Fisher Elementary School District, with the highest valuation per pupil in the state, was \$5.8 million. In San Carlos Unified District, the poorest, it was \$749. Moreover, a property-poor district with a high tax rate could generate less revenue than a property rich district with a low tax rate. Demographic factors--such as income and student population--also contributed to disparities.

Arizona's schools were financed through both state and local funds that guaranteed base-level funding needs through a per pupil amount. However, this amount, the court pointed out, "appears to be unrelated to any minimum amount necessary for a basic education."⁷⁶ Funding in excess of this equalized level had to be raised through added local taxes and bonded indebtedness, which was limited by a district's total assessed property valuation. Thus, the court held, a "district's property value largely determines its ability to construct new buildings and to buy computers and textbooks."⁷⁷ The system was heavily reliant on property values--approximately 45% of total school aid in Arizona depended on these local sources. Thus, the court said, "the state's financing scheme could do nothing but produce disparities."⁷⁸ "severe deterioration is likely to occur if the funding formula's equalization level is low and the district has low property value."⁷⁹

The high court, in finding the school aid system unconstitutional, noted the importance of education to a democratic system of government:

. . . public education has been a key to America's success. The education provisions of the constitution acknowledge that an enlightened citizenry is critical to the existence of free institutions, limited government, economic and personal liberty, and individual responsibility. financing a general and uniform public school system is in our collective self interest.⁸⁰

Brigham v. State--Vermont (1994).⁸¹ Taking aim directly at the property tax as both a revenue source and mainstay of fiscal disparity, the Vermont supreme court invalidated the finance system stating that local fiscal choice for poor districts was "illusory," and "nowhere [does the constitution state] that the revenue for education must be raised locally, that the source of the revenue must be property taxes. . . ."

Although all parties agreed that the finance system--the Foundation Program--paid for the cost of a "minimum-quality" education, the basic weakness of the system, the court said, was that it was "limited": it equalized local capacity only to a level of minimums. Court analysis of the state equalization statutes underscored the major weakness in the Foundation formula: the object of the plan was not educational opportunity but the production of a minimal education program; it did not eliminate wealth disparities.

Substantial dependence on local property taxes resulted in wide disparities in revenues available to local school districts and deprived children of an equal educational opportunity in violation of the Vermont constitution. Property taxes provided 60% of the total cost of public education--one of the highest shares in

the nation. Differences in per-pupil expenditures varied from \$2,979 per student to \$7,726 per student (1995). This was 160% difference. The top 5% of school districts spent from \$5,812 to \$7,803 per student, while the bottom 5% spent from \$2,720 to \$3,608. Therefore, some school districts commonly spent twice as much per pupil as other districts.

The court noted strong and convincing evidence of the relationship between spending and local wealth. It reviewed a Vermont Department of Education analysis that showed statistically significant correlations between a district's spending and its taxable property wealth. For example, the Town of Richford's property tax base was \$140,000 per student, second lowest in the state, and its average student expenditure was also among the lowest, at \$3,743. By contrast, the town of Peru enjoyed a tax base of approximately \$2.2 million per student, and its per-pupil expenditure was \$6,476. However, this relationship did not always occur due to differences in local tax rates. According to the study, "spending per pupil. . .tends to be highest in resource-rich districts who benefit further with low school tax rates. . . .[c]onversely towns with limited resources spend less per students [and] pay higher tax rates."⁸² The court remarked: "Money is not the only variable affecting educational opportunity, but it is one that government can effectively equalize."⁸³

The high court found that the record was "less developed" with respect to plaintiffs' assertion "that funding disparities result in unequal educational opportunities."⁸⁴ However, the state conceded that the funding system denied children residing in comparatively property-poor school districts the same "educational opportunities" that were available to students residing in wealthier districts."⁸⁵ Thus, the state alleged, it is immaterial whether the parties agree on the precise nature of the educational "opportunities" affected by the disparities, but "assumed" in oral arguments were unequal "curricular, technological and human resources."⁸⁶

School districts of equal size but unequal funding would not have the capacity, for example, to offer equivalent foreign language training, purchase equivalent computer technology, hire teachers and other professional personnel of equivalent training and experience, or to provide equivalent salaries and benefits.⁸⁷

The high court found the system inadequate and unconstitutional, stating that "we find no authority for the proposition that discrimination in the distribution of a constitutionally mandated right such as education may be excused merely because a 'minimal' level of opportunity is provided to all." According to the court: "Yesterday's bare essentials are no longer sufficient to prepare a student to live in today's global marketplace."⁸⁸

Campbell Co. School Dist. v. State--Wyoming (1995).⁸⁹ "The definition of a proper education is not static, but will change"⁹⁰ the Wyoming high court declared in 1995. Today a "proper education today requires that broad categories of students' needs must be addressed with appropriate education programs" and resources because

children with impaired readiness to learn do not have the same equal opportunity for a quality education as do those children not impacted by personal or social ills simply because they do not have the same starting point in learning. A legislatively created finance system which distributes dollars without regard for the need to level the playing field does not provide an equal opportunity for a quality education. Having no losers in the system requires there be no shrinking pie but a pie of the size needed. Once education need is determined, the pie must be large enough to fund that need.⁹¹

Using these criteria to measure constitutional compliance, the high court held the education finance system unconstitutional, including provisions related to special education funding and facilities.

As background, in 1980 the Wyoming state supreme court in *Washakie v. Herschler* found that education was a fundamental right and that the school finance system was unconstitutional because wide disparities in funding among school districts failed to afford equal protection to school children in the state. The court held that "funding disparity results in educational opportunity disparity," stating that until financial equality was reached there was no hope of achieving an "equality of quality" schooling for all children across the state.

In the recent court ruling (1995), the Wyoming court reviewed legislative action subsequent to the *Washakie* ruling. It noted that the legislature, in response to that decision, implemented what was considered at the time to be a transitional system of funding and had issued several findings on the funding plan including the need to include cost differentials in a newly designed system. The court quoted Wyoming session laws of 1983, that stated:

Issues of equitable funding in Wyoming involve more than measurements of differences in funding per student between school districts and a corresponding attempt to lessen the disparity unless consideration is given to factors such as increased costs of education in rural districts, equality of programs in rural districts, extraordinary requirements for funds in impacted school districts due to an influx of students and special needs of students.⁹²

Therefore, the court found, *Washakie* required the legislature to take into consideration various balancing factors and devise a state formula which weighted the calculation to compensate for the

special needs of children and other legitimate educational cost differentials. It provided allowances for such variances among individuals, groups and local conditions⁹³ but held that these factors must not be arbitrary but be justifiable, that is, based on research and studies.

However, the temporary funding system became permanent and attempts to include cost differentials in the system that recognized the excess cost requirements--for children with special needs (such as children with disabilities) and school districts with uncontrollably higher costs (such as rural and urban districts)--were unsuccessful.⁹⁴ After over a decade of operation, in 1992, the so-called "temporary" finance system was again challenged in court.

Challengers alleged the "evil was once again disparate spending" caused by arbitrary and irrational factors in the distribution system⁹⁵ which have no relation to "educational costs" and that "educational dollars must be based on need related to the quality of education."⁹⁶ That is, "wealth-based and not cost-justified" disparities were unconstitutional under the court's *Washakie* requirement of "equality of financing in order to achieve equality of quality."⁹⁷ Further, challengers alleged that post-*Washakie* changes to the finance system had exacerbated disparities. Thus, while the "triggering issue" in *Washakie* was wealth-based disparities, the 1995 decision extended that decision beyond wealth-based disparity to other causes of disparity, such as failure to fund adequately district costs related to size, facilities, and student needs, including the needs of students with disabilities.

The district court ruled that the challengers bore the burden of proving that the disparities were not cost-justified (later reversed by the high court) but they did not have to demonstrate that unjustified disparities caused harm to educational opportunity; "harm was presumed."⁹⁸ Witnesses for both plaintiffs and defendants agreed that the cost of education varied according to student characteristics and other factors, such as the costs of utilities, transportation, and classified and certified personnel, but the distribution formula made no adjustment on the basis of such factors.⁹⁹ It was also agreed that one district's increased costs should not be compensated while another's were ignored. In essence, the court held that excess costs related to justifiable special needs must be compensated equitably across all school districts in the state.

As related to special needs and demographic factors, the high court noted that evidence presented by superintendents of challenger districts, that their actual costs exceeded the operating revenue provided through the finance system because the funding plan made no adjustment for varying educational costs. Superintendents also

provided evidence of deficiencies caused by less than full reimbursement of transportation and special education expenditures. The deficiencies are made up from the revenue meant for education of the general student population [C]ombined deficiencies result in insufficient revenue which can be devoted to average students who comprise the majority of students. The actual number of classrooms and staff and the amount of support needed to educate those students are [therefore] inadequate.¹⁰⁰

Representatives of large districts testified that in addition to suffering "deficient funding" caused by the failure of the state to pay for the actual costs of special district and student needs, they "suffered from cost pressures generated by school population growth and student characteristics."¹⁰¹

The high court reviewed the finance system while highlighting the need for studies to provide evidence that all differences in funding allocations were cost-justified and not arbitrarily determined without research support. Justifiable differences in fund allocations, it was held, can include differences in costs resulting from size, such as small and large districts; in transportation costs; and in student needs, such as special education costs and the costs of educating at-risk students. Moreover, the court held, the goal of the system for all children, or "educational success," must be defined as graduating from high school equipped for a role as a citizen, participant in the political system and competitor both intellectually and economically.¹⁰²

The court reviewed the system using the highest standard of review, strict scrutiny, "to determine whether the evil of financial disparity, from whatever unjustifiable cause, had been exorcised from the Wyoming educational system."¹⁰³ It focused on three aspects of the state formula that allowed differential revenue for school districts.

First, "recapture" provisions¹⁰⁴ permitted districts to keep 109% of the "foundation" amount if their locally raised revenues was above that amount. While the additional 9% of funds were defended as being the result of social costs incurred in areas where mineral extraction occurred, the court noted that no study justified this differential. Thus, the "optional mills" levy¹⁰⁵ permitted under statute, was found to be "totally dependent upon the local wealth of individual school districts" which bore no relationship to the expense of educating students in any particular community.¹⁰⁶

Second, capital outlay provisions limited funds to 10% of assessed value of real property, but poor school systems could not raise enough for even a single school building because they had low assessed valuations. This resulted in facility differences across

the state and unmet needs for poor districts. Facility renovation and repair totaled \$268.7 million with a new construction need of \$7.1 million for replacement, totaling \$275 million in needed capital facility expenditures. Yet, according to the court, "despite the reported need, the legislature routinely transfers capital funds designated for facilities to the foundation program to meet operational expenses."¹⁰⁷ Therefore, the court found that its requirement under Washakie of statewide availability from total resources for building construction or contributions to school buildings on a parity for all school districts, had been "virtually ignored," stating:

Capital construction financing is unavailable for many. Safe and efficient physical facilities with which to carry on the process of education are necessary element of the total educational process. State funds must be readily available for those needs.¹⁰⁸

In holding the capital outlay provisions of the finance plan unconstitutional, the court said: "We hold deficient physical facilities deprive students of an equal educational opportunity and any financing system that allows such deficient facilities to exist is unconstitutional."¹⁰⁹

Third, the court reviewed the overall mechanism for funding schools, which was based on number of classrooms units (CRU) needed to operate a school and supported at \$92,331 per classroom unit. This allotment also "failed to provide any specificity in identifying costs."¹¹⁰ Associated provisions, such as the divisor system, benefitting small schools because they cost more while large schools benefitted from economies of scale "were revealed as assumptions without basis in study or empirical data."¹¹¹ These provisions resulted in disparities. The court held that since these funding disparities were not based upon actual cost differentials, therefore they were unjustified and unconstitutional.

The Wyoming Supreme court issued its ruling in 1995 finding the school finance system was unconstitutional under the provisions of the Wyoming constitution, including provisions related to special education funding and facilities. In striking down the state finance system the high court found unpersuasive the state's defense that disparities were a result of local control and stating that,

In view that an educational system is a function of state control, it would be paradoxical to permit disparity because of local control There cannot be both state and local control in establishing a constitutional education system.¹¹²

As the constitution directed the legislature to provide and fund an education system which is of a quality "appropriate for the times," the court found a minimal level of public schooling to be

inadequate. To fulfill the constitutional command, that "equality of financing will achieve equality of quality," the court instructed the legislature to design the "best" educational system, determine the cost and fund it. Aspects of the "best" or quality education system, included not only small class sizes and low student/computer ratios but also "ample appropriate provision for at-risk students, special problem students and talented students."¹¹³ In a ringing conclusion, the high court held that

Because education is one of the state's most important functions, lack of financial resources will not be an acceptable reason for failure to provide the best educational system. All other financial considerations must yield until education is funded.¹¹⁴

DeRolph v. State--Ohio (1997).¹¹⁵ DeRolph v. State was decided by the Ohio Supreme Court in March (1997). The high court upheld the lower court ruling finding the education finance system unconstitutional--including provisions for special education. According to the court, vast wealth created disparities among Ohio's schools deprived many children and youth of high quality educational opportunities, in fact, the system was not even minimally acceptable. The court said:

... we find that exhaustive evidence was presented to establish that the appellant school districts were starved for funds, lacked teachers, buildings, and equipment, and had inferior educational programs, and that their pupils were being deprived of educational opportunity.¹¹⁶

Inequities in programs and services for children in poor versus wealthy school districts were linked to the way in which Ohio allocated school funds. Testimony cited in the opinion revealed that under the school funding system the amount of money that supported Ohio schools bore no relationship to the actual cost of educating a student. As related to special and vocational education, experts testified that providing a uniform amount of state funding to all districts for special education programs and services, "represent a flaw in the system of school funding, because they work against the equalization effect of the formula."¹¹⁷ Moreover, the state did not pay the full cost of special education. "In fact, children in funded handicapped 'units' are not included in the state basic aid formula."¹¹⁸

Ohio's schools were funded through a "foundation" program--this provided a guaranteed amount of money (a minimum) for each student from a combination of state and local funds. This amount of money was further adjusted by the "cost-of-doing business" that assumed higher costs in cities than in rural areas. The grand total was then split between the state and locality based on the total taxable value of real and tangible personal property in the district (times a certain percentage).

The finance system then took special factors into account, such as categorical programs for vocational and special education and transportation. However, no adjustment was made in special factor allotments for local ability-to-pay for education. Rich and poor districts were funded alike:

Thus, funds for handicapped students, for instance, whose education costs are substantially higher (due to state mandates of small class size and because of related extra services) are disbursed in a flat amount per unit (see R.C. 3317.05). If the actual cost exceeds the funds received, wealthier districts are in a better position to make up the difference.¹¹⁹

A substantial part of the decision addressed the appalling condition of Ohio's school facilities, including accommodations for children with disabilities. Citing the "dirty, depressing" conditions of the schools young children attended, the high court also reviewed evidence of the unsafe conditions that existed in the schools. For example, in one school district 300 students were hospitalized because carbon monoxide leaked out of heaters and furnaces. Asbestos was present in 68.6% of Ohio's school buildings and a scant 30% had adequate fire alarm systems and exterior doors. There were leaking roofs, outdated sewage systems that caused raw sewage to flow onto the baseball field, and arsenic in the drinking water of certain schools. In other schools, cockroaches crawled on the restroom floors and plaster was falling off of the walls. Only 20% of the buildings had satisfactory handicapped access. For example, the court noted: "Deering Elementary is not handicapped accessible. The library is a former storage area located in the basement. Handicapped students have to be carried there and to other locations in the building. One handicapped third-grader at Deering had never been to the school library because it was inaccessible to someone in a wheelchair."¹²⁰

The high court struck down the finance system as unconstitutional and instructed the General Assembly to "create an entirely new school financing system."¹²¹ This included a new funding scheme for general education, school facilities and categorical programs such as vocational and special education. Given the severity of the problem, the court pointed out that "the importance of the case cannot be overestimated . . . Practically every Ohioan will be affected . . . [F]or the 1.8 million children involved, this case is about the opportunity to compete and succeed."¹²²

Interestingly, in invalidating the finance plan, the high court overturned a previous 1979 decision that upheld the funding system, *Cincinnati School District Board of Education v. Walter*,¹²³ stating that the scheme had changed in the interim, worsened, and even defense witness testimony indicated that it was "immoral and inequitable."¹²⁴ The high court rejected as unfounded any suggestion

that the problems presented by the case should be left to the General Assembly to resolve, stating ". . . this case involves questions of public or great general interest over which this court has jurisdiction. We will not dodge our responsibility . . . to do so is unthinkable."¹²⁵

Claremont School District et al. v. Governor et al. (1997).¹²⁶ Finding the education finance system inadequate and unconstitutional the New Hampshire high court ruled that education was a fundamental right and the property tax levied to fund education is, by virtue of the State's duty to provide a constitutionally adequate public education, a State tax and as such is disproportionate and unreasonable in violation of the New Hampshire Constitution.

The Court reviewed the funding system in the state. It noted that funding for public education in New Hampshire comes from three sources. First, school districts are authorized to raise funds through real estate taxation. Locally raised real property taxes are the principal source of revenue for public schools, providing on average from seventy-four to eighty-nine percent of total school revenue. Second, funds are provided through direct legislative appropriations, primarily in the form of Foundation Aid, Building Aid, and Catastrophic Aid. Direct legislative appropriations account for an average of eight percent of the total dollars spent on public elementary and secondary education, ranking New Hampshire last in the United States in percentage of direct support to public education. Third, approximately three percent of support for the public schools is in the form of federal aid. At the present time, the State places the responsibility for providing elementary and secondary public education on local school districts.

To comply with the State's requirements, school districts must raise money for their schools with revenue collected from real estate taxes. Every year, the selectmen of each town are required to assess an annual tax of \$3.50 on each \$1,000 of assessed value for the support of that district's schools. Each school district then details the sums of money needed to support its public schools and produces a budget that specifies the additional funds required to meet the State's minimum standards. A sum sufficient to meet the approved school budget must be assessed on the taxable real property in the district. The commissioner of revenue administration computes a property tax rate for school purposes in each district. Using the determined rate, city and town officials levy property taxes to provide the further sum necessary to meet the obligations of the school budget.

As the trial court noted in its order, the total value of the property subject to taxation for local school revenue varies among the cities and towns of New Hampshire.

To some extent, the amount of revenue that a school district raises is dependent upon the value of the property in that district. This point can be illustrated by a comparison of petitioner district Franklin and its comparison district Gilford. In 1994, Franklin's "equalized property value" (property assessed at 100% of fair market value) per student was \$183,626, while Gilford's equalized property value per student was \$536,761. As a result, "property rich" Gilford had a significantly greater assessed value upon which taxes could be imposed for the support of its schools than did Franklin. Gilford raised more money per student than Franklin, even while taxing its residents at lower rates.

The plaintiffs argued that the school tax is a unique form of the property tax mandated by the State to pay for its duty to provide an adequate education and that the State controls the process and mechanism of taxation. Because of the purpose of the tax and the control exerted by the State, the plaintiffs contended that the school tax is a State tax that should be imposed at a uniform rate throughout the State. The State argued that "[b]ecause the school tax is a local tax determined by budgeting decisions made by the district's legislative body and spent only in the district, it meets the constitutional requirement of proportionality." According to the State, "property taxation is a stable and expan[dable] source of revenue which allows the citizens of New Hampshire to decide how to organize and operate their schools in a manner which best meets the needs of their children." The question of whether property taxes for schools are local or State taxes is an issue of first impression.

The high court reasoned that:

1. Providing an adequate education is a duty of State government expressly created by the State's highest governing document, the State Constitution.
2. In addition, public education differs from all other services of the State. No other governmental service plays such a seminal role in developing and maintaining a citizenry capable of furthering the economic, political, and social viability of the State. Only in part II, article 83 is it declared a duty of the legislature to "cherish" a service mandated by the State Constitution.
3. Furthermore, education is a State governmental service that is compulsory. That the State, through a complex statutory framework, has shifted most of the responsibility for supporting public schools to local school districts does not diminish the State purpose of the school tax. Although the taxes levied by local school districts are local in the sense that they are levied upon property within the district, the taxes are in fact State taxes that have been authorized by the

legislature to fulfill the requirements of the New Hampshire Constitution.

4. Therefore, the taxing district is the State.

The question then was whether the school tax as presently structured was proportional and reasonable throughout the State in accordance with the requirements of the state constitution. Evidence introduced at trial established that the equalized tax rate for the 1994-1995 school year in Pittsfield was \$25.26 per thousand while the rate in Moultonborough was \$5.56 per thousand. The tax rate in Pittsfield, therefore, was more than four times, or over 400 percent, higher than in Moultonborough. Likewise, the equalized tax rate for the 1994-1995 school year in Allenstown was \$26.47 per thousand while the rate in Rye was \$6.86 per thousand -- a difference in tax rates of almost 400 percent.

The court concluded: "We need look no further to hold that the school tax is disproportionate in violation of our State Constitution. Indeed, the trial court acknowledged that the plaintiffs "presented evidence that the school tax may be disproportionate if it is a state tax."

Because the diffusion of knowledge and learning is regarded by the State Constitution as "essential to the preservation of a free government," the court found that "it is only just that those who enjoy such government should equally assist in contributing to its preservation. The residents of one municipality should not be compelled to bear greater burdens than are borne by others. In mandating that knowledge and learning be "generally diffused" and that the "opportunities and advantages of education" be spread through the various parts of the State, the framers of the New Hampshire Constitution could not have intended the current funding system with its wide disparities. This is likely the very reason that the people assigned the duty to support the schools to the State and not to the towns."

The court reasoned that ~~T~~here is nothing fair or just about taxing a home or other real estate in one town at four times the rate that similar property is taxed in another town to fulfill the same purpose of meeting the State's educational duty. Compelling taxpayers from property-poor districts to pay higher tax rates and thereby contribute disproportionate sums to fund education is unreasonable. Children who live in poor and rich districts have the same right to a constitutionally adequate public education. Regardless of whether existing State educational standards meet the test for constitutional adequacy, the record demonstrates that a number of plaintiff communities are unable to meet existing standards despite assessing disproportionate and unreasonable taxes.